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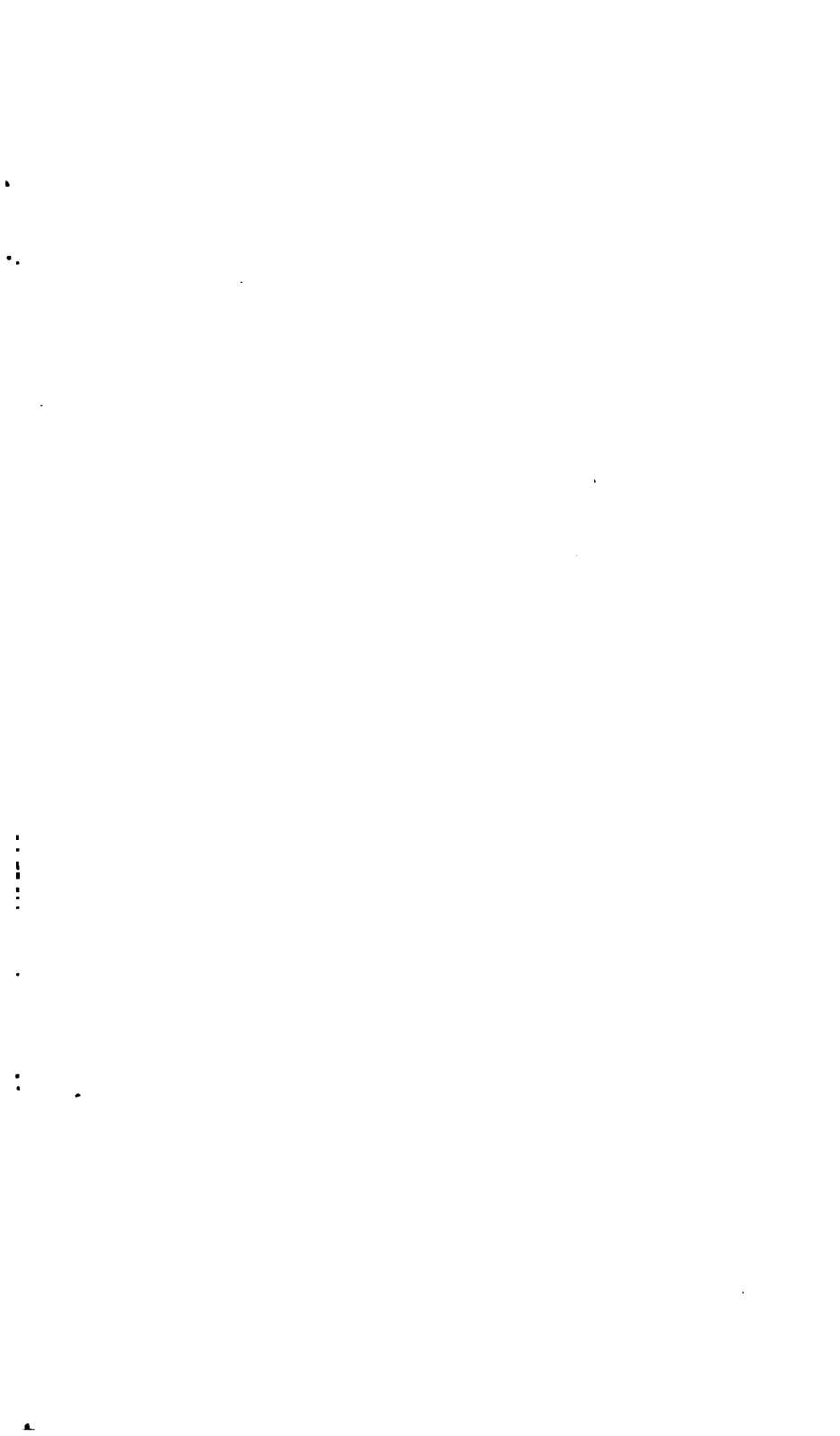
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DECISIONS
OF THE
SUPERINTENDENT OF COMMON SCHOOLS
OF THE
STATE OF NEW-YORK.

SELECTED AND ARRANGED

BY JOHN A. DIX, SUPERINTENDENT.

TOGETHER WITH

THE LAWS RELATING TO COMMON SCHOOLS, AND THE FORMS AND REGULATIONS
PRESCRIBED FOR THEIR GOVERNMENT.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

ALBANY:
PRINTED BY CROSWELL, VAN BENTHUYSEN & BURT.

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PREFACE.

The decisions of the Superintendent of Common Schools contained in this volume were arranged and prepared for publication under circumstances which are explained in a communication to the legislature, of which the following is an extract :

“ STATE OF NEW-YORK, }
[SECRETARY’S OFFICE, }

Albany, 4th January, 1837.

“TO THE LEGISLATURE.

“The Superintendent of Common Schools begs leave to state, that he has collected and arranged in a form similar to that in which cases decided in the Supreme Court are reported, the decisions which have been pronounced by his predecessor and himself in matters of appeal brought before them for adjudication. This collection is designed to embrace every important case which has been decided by the Superintendent; and for the purpose of rendering the decisions more serviceable as precedents, each one is accompanied by a brief statement of the principle or rule which it establishes, or what may with greater technical propriety be denominated a note of the case, and with a succinct recital of the facts, where such recital is essential to a clear comprehension of the subject matter of adjudication. A very large proportion of the cases reported consists of opinions given upon *ex parte* statements; but as the facts accompany the opinions, they will show as clearly as decisions pronounced in matters of appeal, what would be the issue of an adjudication by the Superintendent in a similar case, and they will therefore have the same utility as precedents.

"The decisions of the Superintendent have always been divested, as far as possible, of technicalities. The aim has been to render them so plain that there should be no room for misapprehension, even with those persons who are wholly unacquainted with legal maxims or forms. They have been reported with a strict regard to the same object; and if they have the recommendation of clearness and simplicity, all that was in view will have been attained.

"If each school district were to be put in possession of a copy [of the decisions,] it is believed that applications to the Superintendent for his opinion would be less frequent, and that appeals would often be prevented in cases in which they are now made; as persons thinking themselves aggrieved, would almost always be able to find among the reported cases, one so nearly similar to their own, as to remove all doubt as to the result in the event of an adjudication by the Superintendent. It would, therefore, be reasonable to expect that the inhabitants of school districts would in numerous instances adjust by amicable arrangement matters of difference, which, for want of such a guide, would have been brought before him for decision. Thus not only would the delay, trouble and expense of a controversy be avoided, but there would be no incentive to that feeling of hostility which is too often engendered during the prosecution of appeals, and which frequently continues to disturb the harmony of school districts and to shed an unhappy influence upon the schools themselves, long after the subject matter of contention has been disposed of. The advantage to the Superintendent of having it in his power to refer disputants to a decision applicable to the matter of controversy between them, would be great; for, in case of an application for his opinion, he could, by a mere reference to a reported case, avoid the necessity of entering into the same explanations, as he is now compelled to do in a multitude of cases, where the facts and the rule applicable to them are the same.

"There would be no difficulty in publishing the work at private cost, if the Legislature should not think proper to authorize

its publication at the expense of the State. In the former case, the benefits to be expected from it would be but partial. The publisher would endeavor to realize as large a profit as possible; and the price would probably be such that its circulation would be comparatively limited. The work has been voluntarily undertaken and executed by the Superintendent, with the sole view of rendering the common schools a service. He has considered his time, as well as the materials on which he has been employed, as the property of the public; and the work is respectfully presented to the Legislature, with the desire that it may be disposed of, should it be deemed worthy of any action on their part, in such manner as they may deem most useful and proper.

"JOHN A. DIX."

This communication was referred to the committee of the Assembly on colleges, academies and common schools, who reported a bill, which passed both houses and became a law, and of which the following is the first section :

AN ACT concerning Common Schools.

Passed May 1, 1837.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

§ 1. The Superintendent of common schools is directed to publish, for the use of the common schools in this state, the several acts now in force relating thereto, together with such decisions as may have been made by said Superintendent, and his predecessors in office, in matters of appeal brought before them for adjudication: and he shall also furnish one copy to each town clerk for the use of the commissioners and inspectors of common schools.

The office of Superintendent of Common Schools was created by chap. 242 of the laws of 1812, and Gideon Hawley was appointed to fill it. He continued in office until February, 1821, when Welcome Esleeck was appointed in his place. In April of the same year, the office was discontinued as a distinct depart-

ment, and the duties were assigned to the Secretary of State, who has since that time been *ex officio* the Superintendent of the Common Schools. At the time of this change, John Van Ness Yates was Secretary of State.

During the administration of the department by Mr. Hawley, the Superintendent had no appellate power with respect to the determination of controversies arising in school districts. This power was first given while Mr. Yates was in office. Although numerous decisions were made by the latter, copies were not preserved in his office. His practice was to send them to be recorded by the commissioners of common schools of the towns, or the trustees of the districts, in which the cases arose. Abstracts of some of them were appended to a new edition of the School Laws which he was directed to publish in the year 1822; and a reference to a few of them will be found in this volume, as well as to the exposition by Mr. Hawley of the early laws relating to the common schools.

In 1826, Azariah C. Flagg was appointed Secretary of State, and from the commencement of his administration of the common school department down to the present time, a continuous record of decisions has been preserved.

Mr. Flagg continued in office until January, 1833, when John A. Dix was appointed in his place; and for the reasons before assigned, this volume contains only the decisions pronounced by these two officers.

Should this publication have the effect of diminishing the number of controversies in school districts, or lead to an amicable settlement of them before they shall have ripened into feuds, and thus contribute to the preservation of that spirit of harmony on which the social comfort of parents, and the intellectual improvement of their children are alike dependent, the undersigned will be amply repaid for the labor expended in preparing the decisions for the press.

JOHN A. DIX.

Albany, August 1, 1837.

ERRATA.

Page 1. 1st line from bottom, for 42 read 43.

- | | | |
|---------------|-------------|---|
| " 14. 10th " | " | strike out marks of quotation. |
| " 16. 15th " | " | between " <i>the</i> " and " <i>owner</i> ," insert <i>non-resident</i> . |
| " 18. 9th " | " | for <i>King</i> read <i>Ring</i> . |
| " 28. 9th " | " | after " <i>others</i> " insert 18 <i>Johnson</i> , 351. |
| " 69. 14th " | top, for | " <i>their</i> " read <i>its</i> . |
| " 127. 5th " | top, for | " <i>moneys</i> " read " <i>money</i> ." |
| " 142. 14th " | bottom, for | " <i>officers</i> " read " <i>offices</i> ." |
| " 274. 19th " | " | after " <i>each</i> " insert <i>other</i> . |
| " 334. 11th " | " | for " <i>there</i> " read <i>their</i> . |

DIRECTIONS TO THE COMMISSIONERS OF COMMON SCHOOLS.

The Commissioners of Common Schools, on receiving the copies of this work, which will be sent to them for distribution, will deposite one copy with the Town Clerk for the use of the Commissioners and Inspectors of Common Schools of the town; and they will distribute the residue among the school districts in their respective towns, giving one copy to each district. Before they deliver a copy to a joint district, they must satisfy themselves that it has not already received one from the Commissioners of the other town or towns in which such district partly lies. The work has been printed at great expense to the state; and the utmost care must, therefore, be taken in distributing the copies according to the intention of the law. It is hoped that equal care will be taken in preserving them for the use of the towns and districts to which they are furnished. If after all the districts in a town are supplied, there should be surplus copies remaining on the hands of the Commissioners, they should ascertain whether there is not a deficiency in some adjacent town, and in such a case the surplus copies should be delivered to the Commissioners of the town in which such deficiency exists.—When a new district shall be hereafter created, it will be furnished with a copy by the Superintendent of Common Schools, on a certificate from the Commissioners that such district was formed subsequently to the distribution of the work, and that it has not received a copy.

CASES

RECORDED BY THE

SUPERINTENDENT OF COMMON SCHOOLS

OF THE

STATE OF NEW-YORK,

FROM 1826. TO 1837, INCLUSIVE.

The Commissioners of Common Schools of the town of Lorraine, *ex parte*.

The formation of a new district not having been recorded at the time it was formed, on application to the Superintendent of Common Schools, the commissioners will be authorized to enter their proceedings of record.

On the representation of two of the commissioners of common schools of the town of Lorraine, it appeared that district No. 11 in said town was formed on the petition of the freeholders and inhabitants of districts No. 3 and 7, and that the order of the commissioners was left with the town clerk, who was requested to record the same on the 15th Dec. 1825. By the neglect of the town clerk the order was not recorded.

By A. C. FLAGG, *March 29, 1826*. Ordered, that the acts and doings of the commissioners of common schools of the town of Lorraine in the organization of district No. 11, be entered of record, in conformity to the 11th section of the act entitled "An act for the support of common schools," passed April 12, 1819.*

The Commissioners of Common Schools of the town of Starkey, *ex parte*.

The formation of a new town does not affect the organization of school districts. A district intersected by the line of division between the new town and the town from which it is taken, becomes a joint district.

By an act passed April 6th, 1824, a part of the town of Reading was set off and erected into a new town by the name of Starkey. The first town meeting was held in Starkey in March,

* Sec. 42, page 474, vol. 1, R. S.

and in Reading in April, 1826. By the division referred to, school districts No. 7 and 8, were intersected by the line dividing the two towns, and the commissioners of common schools of the town of Reading applied to the Superintendent to be instructed as to the effect of the division upon the above mentioned districts.

By A. C. FLAGG, *May 20, 1826*. The statute relating to common schools, authorizes the organization of school districts without reference to town or county lines. The alteration of a town line, therefore, does not, as a matter of course, break up or disorganize a school district. And where the line of a new town runs through a school district, the commissioners of the old and new town should regard a district thus intersected by a town line, as a joint district. The law seems to contemplate that school districts should be formed with a view of accommodating neighborhoods, without regarding the divisions into towns and counties, except where the inhabitants would be as well accommodated by regarding such lines. It is not a matter of any particular consequence to the inhabitants of a district, whether or not an imaginary town line runs through their district. But it is a subject of deep interest to them that their school district should not be disarranged; because it is by keeping up their organization, and complying with all the requirements of the law, that the trustees are enabled to make such report as will entitle the district to the public money.

The same steps must be taken to reorganize or dissolve districts composed of parts of both towns, as if those districts had been formed by the commissioners of both towns after the division of the town of Reading.

The Trustees of School District No. 1 in the town of Lansingburgh, *ex parte*.

An error or omission in the assessment roll of the town may be corrected or supplied by the trustees of a school district in making out a tax-list.

In assessing a tax to be levied for the purpose of erecting a school-house in district No. 1, in the town of Lansingburgh, the trustees believing that the valuation of some of its taxable property by the town assessors was erroneous, but doubting their power to correct the assessment roll, addressed to the Superintendent the following question, viz:—"Are the trustees of a school district bound by valuations put upon property by the town assessors, or may they exercise a discretion and vary the valuations accordingly?"

By A. C. FLAGG, *June 5, 1826*. The law provides that the valuations "shall be ascertained and taken from the then last assessment roll of the town, so far as the same can be ascertained and taken therefrom." Where it cannot be thus ascertained,

the trustees can "inquire into and ascertain the same from the best evidence in their power." Sec. 25, act of April 12, 1819.*

Where there is a known error in the town assessment, the trustees may correct it in the district assessment. For instance; if a resident of the district should purchase or sell a lot after the town assessment had been made, the trustees would be required to vary the district assessment accordingly. But where there is no change in the property of the individual, and the valuation is a matter of opinion merely, the trustees must be guided by the assessment roll of the town, even though in their judgment a farm be worth more or less than the estimate put upon it by the town assessors.

Edmund Whittier *against* the inhabitants of school district No. 11 in the town of Ogden.

An appeal to the Superintendent will not be entertained when the point at issue has been settled by an adjudication upon the same case in a court of competent jurisdiction.

This was an appeal from the proceedings of a meeting of the inhabitants of school district No. 11 in the town of Ogden, at which a tax of \$250 was voted to build a school-house. The facts are fully set forth in the decision of the Superintendent.

By A. C. FLAGG, June 23, 1826. It is alleged that the vote imposing the tax was carried by the admission on the part of the moderator of the illegal votes of William Hill and Alsen Smith.

The appellant has presented a number of affidavits to show that Hill and Smith, in the opinion of those who testify, were not legal voters. The affidavits set forth generally that the persons testifying have no knowledge that Hill and Smith were legal voters, and from their situation and circumstances do not believe they were.

On the other side, the record of proceedings before a magistrate is produced and duly authenticated, by which it is shown that Hill and Smith were prosecuted for having voted, without being entitled to vote by law, and that on the trial of the cause it appeared that they were legal voters at the time of the meeting, from the proceedings of which the appeal is brought. In addition to this, Smith and Hill testify that they were at the time of the meeting worth fifty dollars in taxable property.

The Superintendent feels bound to recognize the decision of the court as having settled the point that Hill and Smith were legal voters. This being the only point at issue, it is ordered, that the appeal in this case be dismissed.

* Sec. 79 and 80, pages 492 and 493, vol. 1, R. S.

Zeno Allen and others *against* the Trustees of school district No. 1 in the town of Hounsfield.

If the children residing in a school district are too numerous to be instructed in one school, the trustees may hire one or more additional teachers and the necessary rooms for the accommodation of the additional schools, when authorized by a vote of the inhabitants; but the compensation of the teachers must be provided for in the same manner as though only one instructor had been employed.

The daily opinions of the Superintendent, given in reply to abstract questions and *ex parte* representations, are not to be classed among those decisions which the law declares to be final.

This appeal was brought from the decision of the majority of the trustees of school district No. 1 in the town of Hounsfield, under the following circumstances:

The inhabitants of the district, which was composed of the village of Sackett's Harbor, finding the number of children too great for one school, and disagreeing as to the division of the district, voted, at a meeting held on the 8th of January, 1824, that the trustees should employ one or more additional teachers, and hire separate rooms for them, and voted a tax to pay the rent. They also voted that the public money should be divided among the teachers in proportion to the number of scholars taught in each school. These proceedings were sent to the Superintendent, (John V. N. Yates) who sanctioned and confirmed them, and ordered them, together with his approval, to be recorded in the town clerk's books.

In the fall of 1824, the trustees hired two teachers and a room for the additional school, and gave the inhabitants permission to send to either, as they might choose. The result was that the number of scholars in one of the schools was nearly double the number in the other. This circumstance gave rise to a difference of opinion among the trustees: two of them were in favor of applying the public money equally to the compensation of the teachers, and assessing the balance on the patrons of the schools in proportion to the number of days sent to either or both. The other trustee objected to that mode of compensating the teachers, and obtained an opinion from the Superintendent in favor of his own, which was in conformity to the vote of the inhabitants of the district on the 8th Jan. 1824. Being overruled by a majority of the trustees, an appeal was brought in the spring of 1826, from the determination of the latter to provide for the payment of the wages of the two teachers without regard to the number of scholars taught by each.

By A. C. FLAGG, June 20, 1826. In whatever light this question is taken, I conceive that district No. 1 must be considered one district under the control of one set of trustees, and that all the rules for the government of distinct districts are applicable to this. The law in providing for the distribution of the

public money, recognizes certain geographical divisions ; such as counties, towns and districts. In the 5th section of the act of 1819,* the Superintendent is required "to apportion the said sum of money among the several counties of this state, and the several shares of such counties among the several towns and cities thereof," *in the ratio of the population* "of such counties and towns or cities." The 15th section requires the commissioners to apportion the public money received by them "according and in proportion to the number of children between 5 and 15," &c.† And the 26th section, taken in connexion with the 25th, provides that the trustees shall "agree with and employ all teachers to be employed" in the district ; and to "pay the wages of such teachers out of the moneys which shall come into their hands," &c., and "the residue of the wages of such teachers shall be collected by the trustees" by a tax which is to be assessed upon the inhabitants of the district, "according to the number of days for which each" person "shall be liable to pay for instruction," &c.‡ Mr. Hawley, who drafted the law of 1819, in his exposition of this part of the act, says: "All who reside in the district, and attend the school, as they may of common right, must necessarily participate *equally* in the benefit of the public money ; for as it must be applied to the payment of teachers' wages generally, without reference to any particular scholars, it will reduce the amount which would otherwise be payable by each employer, alike to all. If a district be formed out of two or more adjoining towns, and the trustees receive money from each town, they must nevertheless consider it as one common fund, and apply it for the benefit of all alike, in the same manner as if they were *one entire district in one town.*"

In authorizing the Superintendent, the commissioners and the trustees to apportion and distribute the public money, the law recognizes the principle of graduating the apportionment according to the population and number of scholars, and equally among the different individuals of the same district.

It is the duty of the trustees to "employ all teachers" and to furnish such an amount of tuition as the necessities of the district require ; and they are bound to furnish to each individual of the same district tuition at the same rate. Three teachers were hired and the trustees assured the inhabitants that the price of tuition should be alike to all. But by applying the *rule* contended for in this case, a person who has sent six children to Shepard would have to pay \$14.46, while a person sending the same number to Chaplin would have to pay only \$4.08 ; and

* Sec. 3, page 467, vol. 1, R. S., as amended by the act of April 20, 1860, chap. 320 of the laws of that year, sec. 5 and 6.

† Sub. 6 of sec. 20, page 470, vol. 1, R. S.

‡ Sub. 7 and 8 of sec. 75, page 481, vol. 1, R. S.

all in the same district. There is no authority in the law for such an unequal distribution, and I conceive that it is irreconcilable with the principles of equity. What equivalent is given to the patrons of Shepard's school to warrant this great disproportion in the assessment? None, which is entitled to consideration. The patrons of the small school are not formed into a separate district by their own request, and designated by name as belonging to one school, nor are they bounded by the designation of certain geographical lines on account of any local accommodation to their children. But the taxable strength of their sub-district is to be settled by chance; subject to be affected by the inclination or caprice of others. They continued in good faith in the school, as requested by the trustees, relying upon the assurance that the charge for tuition would be alike upon all the members of district No. 1. Their neighbors changed to the other schools, and thus left the parents of thirty scholars, who had no volition in the case, to pay as much for tuition as the parents of a hundred scholars; and all this under the authority of the same trustees. This view of the subject is forcibly illustrated by the fact that some members of the district actually sent to all three of the schools. And here it might be well to enquire what rule the trustees should adopt in making out the assessment against a person who should have sent to all the schools: Should it be $8\frac{1}{2}$ mills per day for the time sent to Chaplin; $2\frac{1}{2}$ cents for the time sent to Everett; and 3 cents for the time sent to Shepard? In this way, they might require a different scale of assessment for almost every person in the district.

As to the vote of the district it is only necessary to say that a tax voted by a district meeting must be an equal tax, according to property, upon all the inhabitants of the district. The resolution passed in Jan., 1824, contemplated a division of the public money "according to the number of scholars taught in each school." It was expected, no doubt, by the meeting, that the schools would be equally attended, and consequently the money equally apportioned. It is not to be inferred from the terms of this resolution that the meeting could have contemplated an inequality in the distribution of the public money or in the apportionment of the tax. This inequality was caused by those who disregarded the efforts of the trustees in their attempt to equalize the schools. But the present trustees are protected by a subsequent vote of a meeting, which is, "That the teachers' wages be paid by a tax on the scholar, after the public money is expended." This was a vote taken at a meeting of the whole district; it must have had reference to all the inhabitants of that district taken collectively, and to the aggregate amount of tuition required for district No. 1. In collecting the teachers' wages "by a tax on the scholar," it was the obvious duty of the

trustees to assess each person according to the number of scholars sent by him; that is, in proportion to the amount of tuition which had been received by his children, having relation to all the other inhabitants of the district. It could not have had reference to the number of scholars which might by chance be sent to one or the other of the three schools.

The opinion given by the Superintendent to the trustees of 1824, could only apply to that special case. It could not be considered permanent in its character, on the ground that it was the Superintendent's construction of the school act; for a different rule is established in that act in regard to taxes and distributing the public money in districts. And the appellants cannot claim an adherence to its principles as a decision under the 7th section of the act of 1822. That act provides that persons aggrieved by decisions of the trustees, &c., may appeal to the Superintendent, "*whose decision thereon shall be final.*" The fact of establishing a tribunal from which there is no appeal, does not consequently give the Superintendent unlimited jurisdiction. So far from this it ought to be an admonition to exercise this authority with great caution and circumspection, and not until after a hearing of both parties, and an examination of all the facts in the case. In this case, the opinion of the Superintendent appears to have been given on an *ex parte* representation, and must be considered merely advisory, and applicable to that special case, based upon the representations made. It is only in cases of appeal that the decisions of the Superintendent are declared by the law to be final; and in such cases the law pre-supposes that there will be a hearing of both sides and a full investigation of the rights of both parties, preparatory to making such decision. The daily opinions of the Superintendent given in reply to abstract questions and *ex parte* representations, cannot be classed among those decisions alluded to in the act of 1822, and which are declared to be final. It would be unjust to allow the opinions thus given, in reply to abstract questions, to affect the rights of individuals beyond the cases in which they were specially given.

If it is contended that those who sent to the large school relied upon the order of the Superintendent, it might be asked in what respect they have injustice done them? According to the decision of a major part of the trustees, they are called upon to pay only an equal proportion of the expense of the tuition which was requisite for the first district. Is this a hardship? What entitles them to exemption? The only reason urged by the appellants is, that their children suffered the inconvenience of attending a crowded school. But this was a matter of choice with themselves; and if they sent an unreasonable number of scholars to the school, against the wishes of the trustees, they cannot expect to take advantage of their own wrong.

It is a well settled principle that taxation to be just must be equal. It is inequality which renders taxes intolerable and furnishes a good cause of complaint. There is no authority given in the school act, or in the general act for the assessment and collection of taxes, for making any other than an equal assessment, graduated according to the property and ability to pay of each individual. This equality is not only kept up among the different persons of the same town, but by the 19th section of the act for the assessment and collection of taxes, boards of supervisors are required to compare the rolls of the different towns, "to ascertain whether the valuations in one town bear a just relation or proportion to the valuations in all the towns in the county." I am unable to discover any good reason which would authorize a departure in relation to any of the citizens of district No. 1 from this equitable principle which is recognized in all our systems of taxation.

After a full consideration of the appeal of Zeno Allen, one of the trustees of district No. 1 in Hounsfield, and Hiram Steele, and others, inhabitants of said district, and after a hearing of the evidences produced by Messrs. Canfield and Jenison, two of the trustees of said district, as well as of those produced by the said appellants, the Superintendent of Common Schools decides, that the appeal of the said Zeno Allen and others, be dismissed, and that the major part of the trustees of district No. 1 in Hounsfield in the county of Jefferson, have acted correctly in the distribution of school money and in the assessment for the collection of the residue of teachers' wages in said district, and that the collector of district No. 1 will proceed to collect said assessment under the direction of the trustees, or a major part of them, according to law.

The Trustees of school district No. — in the town of Greece, *ex parte*.

Land purchased after a tax is voted, but before the tax-list is made out, must be assessed to the purchaser if he resides in the district.

A tenement leased for a school-house cannot be taxed.

Vessels, canal-boats, &c., are not exempt from taxation.

This was an application to the Superintendent to decide certain questions, which arose among the trustees of district No. — in the town of Greece, in assessing a tax voted by the inhabitants of the district for the purpose of leasing and repairing a tenement to be used as a school-house. The questions presented by the trustees are subjoined, with the answers of A. C. FLAGG annexed, *March 30, 1828*.

Question 1. Can land, which was purchased after a tax was voted, and before the tax-list was made out, and which was tax-

ed as non-resident property in the last town assessment, be assessed to the purchaser, he being a resident of the district?

Answer. Land purchased after a tax is voted, but before the tax-list is made out, may be assessed to the purchaser, he being a resident of the district, notwithstanding it may have been assessed as non-resident land in the last town assessment. The 25th section of the act of 1819, requires the trustees to make out a rate bill or tax-list of "all the taxable inhabitants residing in their district, *at the time of making out such rate bill or tax-list,*" &c., "according and in proportion to the valuations of the taxable property which shall be owned or possessed by them *at the time last aforesaid,*"† which is the time when the list is made out. They are required to refer to the town assessment for the valuations of the property, but not for a list of the owners or occupants; and the town assessment is not obligatory on them even for the valuations, only so far as it is a correct guide.

Question 2. The house, which has been leased, is it taxable to the lessor?

Answer. If the school-house is meant, it cannot be taxed. The 3d section of the "Act for the assessment and collection of taxes," passed April 29d, 1823,‡ in the exemptions from taxes, includes *school-houses* and the lands upon which they stand.

Question 3. Are vessels, canal-boats, &c., a species of personal property liable to taxation in town or district assessments?

Answer. Vessels, canal-boats, &c., are not exempted by the tax law. The 4th section of the act for the assessment of taxes,§ declares that "*all personal estate of whatever description*" shall be subject to taxation.

The Trustees of school district No. 1 in the town of Athens, against the Commissioners of Common Schools of said town.

If the annual report of the trustees of a school district is furnished before the public moneys are apportioned by the commissioners, it is in time.

An omission on the part of the trustees to comply with a provision of law before the act containing it has been published and distributed, ought not to prejudice the equitable rights of the district.

This was an appeal by the trustees of school district No. 1 in the town of Athens, from the decision of the commissioners of common schools of said town, in refusing to allow that district a portion of the public money. The facts are fully stated in the Superintendent's decision.

* Sub. 3 of sec. 75, and page 462, sec. 79, vol. 1, R. S.

† Sec. 76, page 462, vol. 1, R. S.

‡ Sub. 3 of sec. 4, page 353, vol. 1, R. S.

§ Sec. 1, page 387, vol. 1, R. S.

By A. C. FLAGG, *July 21, 1826.* In this case the commissioners rejected the report of the trustees of district No. 1, and refused to apportion the school money to said district.

1st. Because the report of the trustees was not made within the time contemplated by the school act.

2d. That said report does not contain the names of parents and guardians of children in said district, as required by the act.

From this decision one of the commissioners dissented. The trustees state that they were newly elected last spring; that on being elected it was not made known to them that the annual report had not been made; that as soon as the omission was known the most prompt measures were adopted to remedy the defect; that the report was made out and placed in the hands of the town clerk on the tenth of April, and before the commissioners had met to apportion the public money. The commissioners met on the first of July.

The trustees further state, in relation to the second objection, that they obtained the school act from the town clerk, and that the act requiring a list of the parents and guardians of children was not contained in the law which they received from the clerk.

Two of the commissioners concur in the statement made out by the trustees: it is therefore taken as embracing all the facts which are necessary in a decision of this question.

The ultimate object of the school system is to secure to each school district in the state a rateable proportion of the public money as an inducement and encouragement to the employment of competent instructors, and the establishment and continuance of good schools. To effect this object, regulations, and a strict observance of them, are necessary.

But where the inhabitants of a district have complied with all the substantial requirements of the law, although the trustees may have omitted some fact, it is better to allow the report to be corrected, than to deprive a district of its equitable portion of the school moneys: For the deprivation falls on the inhabitants of the district, and they have complied with the conditions of the law in fact, although their trustees have not in form. If the report had not been furnished before the commissioners met, the money would have been apportioned, and the district would have been without remedy; the other districts being interested in having a prompt distribution of the money. But this report seems to have been made before the commissioners met to distribute the money, and therefore could not have occasioned delay or worked an injury to the other districts of the town.

The second objection relates to an omission of the names of the parents and guardians of the children between 5 and 15, agreeably to an amendment of the school act, passed in 1823.

This amendment has not been distributed to the school districts, and as the trustees were newly elected, and called upon the town clerk for the law, and as he gave them the "act for the support of common schools" published and distributed by order of the Superintendent, they had a right to suppose that this act contained all the law on the subject; and it would be unreasonable that a district should lose its rights for an omission under such circumstances.

The object of requiring the names of parents and guardians, is to enable the commissioners to test the accuracy of the number of children returned by trustees: without this, where controversies existed as to the lines of districts, the same children would be returned by two sets of trustees, and the reports could not be impeached. By giving the names, a remedy is furnished for such difficulties. In the case of district No. 1, the accuracy of the list of children is not questioned, and the rights of other districts are not prejudiced by this omission to give the names of parents.

Under all the circumstances of this case, it is decided, that the report of the trustees of district No. 1 in Athens, be accepted by the commissioners, and that said district is entitled to its just proportion of the school money.

The trustees of school district No. 4 in the town of Orangetown, *ex parte*.

None but children residing in a school district can of right be benefitted by the public money.

But if children not residing in the district are admitted into the school, their parents should be apprised of the conditions on which they are received.

This was an application to the Superintendent for his direction on the following case: An inhabitant of school district No. 4 in the town of Orangetown, sent to the district school three of his grand children, who resided with their father in the state of New-Jersey, near the line of the district; the grand parent, who owned about one fourth of the taxable property of the district, holding himself responsible for their tuition.

By A. C. FLAGG, *July 27, 1826*. The question presented by your letter of the 20th is, whether children residing in another state, and not incorporated in the district, can participate in the public money. There is no provision in the law to extend the benefit to any except resident children of the district. Indeed the trustees can exclude all children except those who are residents of the district, even from attending the school. In the exposition of the school act, page 35, Mr. Hawley says,— "If children not residing in the district be permitted by the trustees to attend their school, as such permission might have been

withheld, it may, and ought if granted, to be on condition that no part of the public money shall be applied for their benefit."

But in the case presented in district No. 4 in Orangetown, it appears that the trustees granted permission to non-resident children to attend the school, on the application of a resident and taxable inhabitant of their own district, and without any conditions, save those which were common to all the children of the district. The school is closed, and you are now to apply the public money and collect the residue of the teacher's wages from the inhabitants who are liable therefor. The public money is paid, as far as it goes, towards extinguishing the sum total of tuition expenses for the district. The parent of the children being out of the state, has no claim to any benefit from the school money; and if the children as a matter of favor had been admitted on his application, he would have been bound to pay the full expense of tuition. But he is out of your jurisdiction, and cannot be taxed; and indeed he has made no contract with the trustees, and is not on any principle expected or required to pay. The legal claim of the trustees is against the grand-father of the children; he made the contract, and he is bound to pay according to the conditions of his contract. He being a resident of the district, and as the trustees admitted scholars on his request, without conditions, common usage would guarantee to him the conditions which were usual for all the taxable inhabitants of the district. The justice of having the conditions established at the commencement of the school, if any discrimination was to be made, is obvious: it might have been one inducement with the grand-father, in becoming accountable for the tuition of the children, that he could give them the advantages of school privileges which he had been taxed in common with others to acquire. Then was the time for the trustees to inform him that the children could not be admitted to the privileges of the school, on his request, unless he would pay full tuition without the benefit of the public money. Unless there exists some special cause, the trustees must assess all the tax paying citizens of the district at the same rate per scholar, and it would be unfair to apply special conditions to the prejudice of the interests of an individual unless the terms were made known to him at the time the contract or application was made for the tuition of the children in question.

The admission of non-resident scholars is an act of favor altogether. There is no law for admitting them at all; districts and trustees accede to it as a matter of courtesy or accommodation, and the trustees can dictate the conditions; they can require foreign scholars to pay full price for schooling, and also for house rent; but having in this case exacted none of these conditions, and having consented that the children should be mem-

bers of their school, on the application and responsibility of one of the inhabitants of their own district, they can only make out an equal assessment, according to the scholars sent, upon all the tax paying inhabitants in the same district.

In future, as there is no law in favor of the admission of scholars from another state, the trustees ought not to admit them, unless upon such conditions as will protect most scrupulously the interests of residents of the district.

The Commissioners of Common Schools of the town of Burns, *ex parte*.

On the division of a town and the formation of a new one, the commissioners of common schools of the new town cannot disturb the organization of a school district lying partly in both, without the concurrence of the commissioners of the other.

Inhabitants of school districts have not power to alter the boundaries of their districts.

Commissioners of common schools are not authorized to change the site of a district school-house, although their consent to such change is necessary in some cases.

This was an application from the commissioners of common schools of the town of Burns for the decision of the Superintendent upon their own proceedings in relation to school district No. 1, lying partly in that town and partly in the adjoining town of Dansville. By an act passed the 17th March, 1826, a part of the town of Ossian was set off and erected into a new town by the name of Burns. By this division, school district No. 1, lying partly in the town of Ossian and partly in the town of Dansville, became a part of the town of Burns and Dansville, all the territory of the district belonging to the town of Ossian being included in the bounds of the new town. Soon after the division, the commissioners of common schools of the new town met, together with the inhabitants of school district No. 1, for the purpose of re-organizing the district. The commissioners resolved that the connexion with Dansville should be dissolved; and at a subsequent meeting of the inhabitants of the district, it was declared by a resolution to that effect, that four persons residing in Dansville, and formerly constituting a part of that district, were no longer members of it. The commissioners of the town of Burns at the same time selected a new site for the district school-house.

By A. C. FLAGG, August 14, 1826. It seems that district No. 1 was originally formed from parts of Dansville and Ossian, (now Burns,) and your inquiry is, "had not the new town of Burns a right to form themselves into districts without reference to the town of Dansville?" No. District No. 1 was originally formed by the concurrence of a major part of the commissioners of Dansville and Ossian; and it is necessary to have a concur-

rence of the same authority to dissolve as to form a district. Burns stands in the same relation to district No. 1 that Ossian did, and its commissioners could not dissolve the connexion with Dansville without giving notice to the commissioners of that town. If the commissioners refused or neglected to attend, then the commissioners of Burns might have proceeded to dissolve the connexion, as provided by the 6th section of the amendment to the school act of 1822.*

The vote in relation to admitting or excluding the four persons in Dansville is of no consequence. The district could not vote away their rights, and if they were not legal members of the district, a vote could not make them so. The 12th section of the act of 1819,† gives to the commissioners the sole power of forming, as well as altering and regulating school districts; but in this case the district meeting usurped that authority, when they determined to vote four members out of the district.

"Were the acts of the commissioners legal as to fixing the site of the school-house, contrary to the voice of the district?"

The 20th section of the act of 1819‡ authorizes the inhabitants of the district, or a majority of such of them as shall be present at any district meeting legally convened, to fix on the site of the school-house. A majority can designate the site; but after it is fixed, and a house built, even a majority of a regular meeting cannot remove the site, without a certificate from a major part of the commissioners that such removal is necessary and proper. The proviso to the 20th section§ is designed to give the commissioners a negative upon the district vote under a particular state of things. They (the commissioners) have no authority to change the site of a school-house; they can assent to the change or object to it. The commissioners ought not to interfere in changing the site of a school-house, unless requested by a vote of the district: and on such request, which would be an expression of the wishes of a majority, the commissioners are to determine whether it is necessary and proper to have the change take place.¶

* Sec. 65, page 479, 1 vol. R. S.

† Sub. 1, sec. 20, page 470, 1 vol. R. S.

‡ Sec. 61, page 478, 1 vol. R. S.

§ Act of 17 Feb., 1831, chap. 44.

¶ The law in relation to the removal of school-houses and change of their sites, has been amended in several important respects since this decision was pronounced, (see sec. 70 in the appendix to this volume,) though the principles of the decision, so far as the right of commissioners of common schools to change the site of a school-house is concerned, are unaltered by subsequent legislation.

A. B., an inhabitant of school district No. 7 in the town of Schoharie, *ex parte*.

In making out rate-bills to provide for the payment of teachers' wages, inhabitants of school districts can only be charged for so much time as their children have actually attended school.

Superintendent cannot interfere with proceedings before justices of the peace ; but his opinion will be given with a view to the amicable adjustment of controversies.

This was an application to the Superintendent for his opinion upon a statement of facts contained therein.

By A. C. FLAGG, *September 9, 1826.* Your letter of the 8th states that a person who sent his children to a school in district No. 7 in Schoharie for two months and a half, was charged by the trustees in the warrant issued according to a vote of the district meeting for teachers' wages, with six months' tuition. On the state of facts presented in your letter, the trustees were wrong. "The 26th section," to which you refer, authorizes the trustees "to ascertain and settle by examination of the returns or school lists of their teacher by him for that purpose to be kept, and certified on oath to be just and true, the number of days for which each person not exonerated shall be liable to pay for instruction," and to make out a rate-bill accordingly. For what purpose is the teacher required to keep a list, and the trustees to examine that list, unless for the purpose of ascertaining from it the number of days which each person has sent to school, and to charge them in proportion to the number of days actually sent? The trustees under the authority given them to "ascertain and settle," are not to do it arbitrarily, but according to fair principles "by examination of the school lists." There could be no justice in charging a person for 100 days, who had sent only 50 ; and it would be extremely oppressive if trustees could arbitrarily charge a man with six months schooling, if he commenced sending and stopped after two months.

The demand of the bill at the time of withdrawing the scholars is of no consequence. The trustees could not make out the bill until the expiration of the school. But when they did make it out they should have taxed the individual only for the number of days during which he actually sent to school.

You say that a suit has been commenced, and that my opinion will prevent litigation, &c. With this view it is given. There is no appeal, as you are doubtless aware, from a suit at law to the Superintendent ; and I am reluctant to give opinions in a case where a suit is pending. At all events, opinions thus given ought not to influence the case before the magistrates. If the parties can agree to take their cause out of court, and submit all the facts, I will cheerfully decide the case.

The Trustees of school district No. 1 in the town of Middlefield *against* the Commissioners of Common Schools of said town.

The acts of an officer *de facto* are valid, so far as the public and third persons are concerned.

This was an appeal from the trustees of school district No. 1 in the town of Middlefield, from the proceedings of the commissioners of common schools of said town in setting off certain inhabitants to other districts. The ground of objection taken by the appellants was that one of the two commissioners by whom the alteration was made, did not file his acceptance of the office of commissioner until after the expiration of 15 days from his election, and until after the performance of the official act from which the appeal was brought.

By A. C. FLAGG, October 3, 1826. The principle involved in this application has been decided by the supreme court in the case of the People vs. Collins, 7th Johnson's Reports, page 549. In that case the court say, "The allegation is not material that the commissioners had not caused their oath of office to be filed in the town clerk's office. If the commissioners of highways acted without taking the oath required by law, they were liable to a penalty; or the town upon their default, might have proceeded to a new choice of commissioners. But if the town did not, the subsequent acts of the commissioners as such, were valid as far as the rights of third persons and of the public were concerned in them."

(ANONYMOUS.)

Persons leasing specific portions of a lot are to be taxed for so much as they lease. The agent or servant of the owner must reside on the lot in order to subject such owner to taxation.

By A. C. FLAGG, October 18, 1826. "A. owns a farm in district No. 24 of 200 acres, about 100 improved: he resides in No. 3: he leases two small lots and houses, and improves the remainder himself and by his hired men living with him."

1. The houses and lots leased should be assessed to the occupants; as they lease specific portions of the same, they are tenants; and Mr. Hawley in his exposition of the 25th section, p. 33, school act, says in relation to making non-residents of the district taxable therein, that "it does not apply to landlords who have tenants thereon." If the tenant ought not to pay, he has his redress upon the landlord by the 32d section of the act of 1819.*

* Sec. 83, page 483, vol. 1 R. S.

2. If A. "improves and occupies by his agent or servant" the remainder of the farm, then he should be taxed for it; and by the 25th section the valuation is to be taken from the then last assessment roll of the town; in which valuation the wood-land is of course included.

Mr. Yates, in the 13th decision, p. 37, has decided that a non-resident, although he may cultivate a farm himself, cannot be taxed unless the farm is *occupied* at the time by his agent or servant. By this occupancy he probably meant a residence on the lot. In this case there has not been such an occupancy as would render the owner liable to taxation for the remainder of the farm; and if the tenants have leases for specific parts of the farm, they can be assessed only for such parts as are covered by their leases.

Asa Philips *against* the Trustees of school district No. 2 in the town of Granby.

Rule of taxation applied to a particular case.

This case was submitted by the parties.

By A. C. FLAGG, *November 22, 1826.* In the case submitted by Asa Philips and the trustees of school district No. 2, Granby, Oswego county, it appears that the said Philips owns two-fifths of lot No 75 in Granby, on which are two houses, which are occupied by two men who are employed by Mr. Philips as sawyers in mills of his adjoining the premises, Mr. Philips residing in another town and county. The 25th section of the act of 1819* provides that every person owning or holding any real estate lying within such district, who shall improve and occupy the same by his agent or servant, shall be taken and considered a taxable inhabitant of such district, &c. Where a family resides upon a lot, it is to be presumed that there are scholars to enjoy the benefits of a school, and the residence of a family on the lot is such an occupancy as to justify taxation. If the individual hires the premises, and is in the character of a tenant, then he is to be taxed personally; but in this case Mr. Philips states that he employs these men as sawyers. It is therefore decided that the trustees are correct in assessing Mr. Philips for his interest in lot No. 75, in school district No. 2, Granby.

* Sec. 77, page 482, vol. 1, R. S.

The Clerk of school district No. 9 in the town of New-Haven, *ex parte*.

A new district being formed, a notice to each inhabitant of the time and place for the first meeting is sufficient.

This was an application from the clerk of school district No. 9 in the town of New-Haven, for the direction of the Superintendent in respect to a notice given in the manner explained in the subjoined opinion.

By A. C. FLAGG, *December 6, 1826*. In warning a school meeting in the first organization of the district, a person liable to pay taxes notified the inhabitants that they were set off into a district, and of the time and place of the meeting. This in my opinion was a sufficient notice. The 13th section of the act of 1819* says the commissioners shall give a written notice to some inhabitant liable to pay taxes, "describing such district," &c. It is necessary for the person notifying the inhabitants to have the district described, in order that he may know whom to notify. The inhabitant notified of the school meeting has no necessity for knowing who else is notified. The notice is to him as an individual. The same section defines the extent of this notice to individuals by saying when the person is absent from home, he is to be warned by leaving at his place of abode a copy of the commissioners' notice, "or of so much thereof as relates to the time and place of such meeting." This is clear and conclusive. It could not be necessary that a personal notice should be more full and particular than is required for a notice left in the absence of the person notified.

Josiah Hilton and others *against* the inhabitants of school district No. 3 in the town of Erwin.

A person taking up his residence in a school district, becomes by that act a voter, if he has the requisite qualifications.

If in balloting for district officers the number of ballots exceeds the number of voters, a second balloting should take place.

This was an appeal by Josiah Hilton and others, inhabitants of school district No. 3 in the town of Erwin, from the

* Sec. 55, page 477, vol. 1, R. S. In the case of King vs. Grout, 7 Wendell, 341, decided in 1831, the Supreme Court held that it was not indispensably necessary to insert the boundaries of the district in a notice given by commissioners of common schools for a meeting for the election of officers in school district No. 1 in the town of Ogden under circumstances somewhat similar to those which occurred in school district No. 9 above reported; though it is supposed that the notice in the case decided by the Supreme Court was given in consequence of a re-organization of the school district, and when there was no competent authority existing within it to call a special district meeting.

proceedings of an annual meeting in said district, at which officers for the ensuing year were chosen. The objections, upon the ground of which the interposition of the Superintendent was sought, were;

1st. That one person voted at the meeting who had come into the district a short time before, and who had not the amount of property necessary to entitle him to vote;

2nd. That in counting the ballots, they were found to be one more in number than the persons present.

By A. C. FLAGG, *February 22, 1827*. If the person who is alleged by the appellants not to have been entitled to vote, had actually taken up his residence in the district, and had the property required by law, he was a voter, although he might have been there only a week. If he was not a taxable inhabitant, he might have been prosecuted for the penalty, provided by law, before a magistrate, before whom access to all the facts could be had. The testimony before the Superintendent is too vague in reference to this point to justify an interference with the proceedings on that ground.

It appears that there was one more ballot than there were persons present at the meeting. The most satisfactory proceeding in such a case would have been to have balloted over again; and this ought to have been done. A double ballot being put in, however, does not destroy an election. When the ballots and poll-lists do not agree, (in general elections,) the excess of ballots are drawn before they are opened; but the election or the votes of the town are not vitiated by a disagreement between the poll-list and the ballots. It is stated in the affidavit of the moderator that the persons declared elected, had a majority after deducting the ballot alluded to.

Under all the circumstances of this case, it is decided that the officers chosen in district No. 2 in the town of Erwin, at the annual meeting, from the proceedings of which relief is sought, are the legal officers of said district, and that the appeal be dismissed.

The Trustees of school district No. 14 in the town of Cazenovia, *ex parte*.

If the district clerk refuses to give notice of a meeting of the inhabitants, the notice may be given by the trustees.

If the collector refuses to give a bond, his office becomes vacated, and the trustees may make a new appointment.

This was an application from the trustees of school district No. 14 in the town of Cazenovia, for the direction of the Superintendent with respect to the following cases:

1st. The district clerk when required by them to give notice of a meeting of the inhabitants, refused to act.

2nd. The collector of the district, on receiving a warrant for the collection of a tax, declined giving a bond for the faithful discharge of his duties.

By A. C. FLAGG, *March 12, 1827*. By the proviso to the 20th section of the act of 1819, the trustees are authorized to call special meetings. By the 23d section* it is made the duty of the clerk to notify such meetings whenever they shall be called by the trustees; and in case of the absence or incapacity of the clerk, the trustees themselves may (and it is declared their duty to) give notice to the inhabitants of the district of a special meeting. If the clerk refused to notify the meeting, then it might be done by the trustees or one of them. Even for a want of notice to a part of the inhabitants, a meeting shall not be deemed illegal, unless the omission to give such notice was wilful or designed, (see last clause of the proviso to the 20th section, act of 1819.†)

By the 24th section of the school act, the trustees can require a bond from the collector, "and in case of his refusal or neglect to execute and deliver such bond within such time, not less than ten days, as shall be allowed to him for that purpose by the trustees, his office of collector shall thereby be vacated, and thereupon it shall and may be lawful for the said trustees, or the major part of them, to appoint any other person residing in their district to supply such office so vacated."‡

(ANONYMOUS.)

If the commissioners of common schools know a district report to be erroneous, the public money may be withheld, and the case submitted to the Superintendent.

By A. C. FLAGG, *March 16, 1827*. If the trustees of a school district make a false report, they are liable to a fine of twenty-five dollars, under the 28th section of the school act.‡ Commissioners of common schools cannot actually know a report to be erroneous, unless they have positive proof of the fact. If such proof were to be presented to them, they might withhold the public money until the facts could be presented to the Superintendent for his decision.

* Sub. 2, sec. 74, page 480, vol. 1, R. S.

† Sub. 2, sec. 75, page 491, vol. 1, R. S.

‡ Sec. 107, page 487, vol. 1, R. S.

§ Sec. 63, page 478, vol. 1, R. S.

|| Sec. 96, page 485, vol. 1, R. S.

The Trustees of school district No. 6 in the town of Canajoharie, *ex parte*.

A tax may be levied in a school district to build a wood-house and necessary.

This was an application to the Superintendent to decide "whether a school district is authorized to raise money by tax to build a wood-house and such other appendages as common decency requires should be attached to a school-house?"

By A. C. FLAGG, *May 5, 1827*. The 20th section of the act of 1819 gives authority to the taxable inhabitants of school districts to vote such a tax as a majority of them shall deem sufficient to procure a school-house, and to furnish it with "necessary fuel and appendages."* Both the conveniences referred to in the case presented to me are to be regarded as necessary appendages to a school-house, and the inhabitants of the district have an undoubted right to provide them.

The Town Clerk of the town of De Ruyter, *ex parte*.

The proceeds of lands set apart for the support of the common schools in a particular town, must be applied exclusively for the benefit of the inhabitants of the town to which the lands belong.

This was an application for the direction of the Superintendent with regard to the disposition to be made of the rent of a school lot belonging to the town of Fabius, in Onondaga county, a portion of the rent having been apportioned to a school district lying partly in that town and partly in the town of De Ruyter, Madison county, which had no local fund yielding an annual income. The question submitted to the Superintendent was, whether the amount so apportioned to the joint district was to be regarded as a common fund, to be applied for the benefit of the entire district, or whether it was to be applied exclusively for the benefit of the inhabitants of that part of the district lying within the boundaries of the town of Fabius.

By A. C. FLAGG, *May 5, 1827*. The third section of the act relative to the school lands passed March 23, 1798, provides that the money arising from those lands "shall be applied to the use of schools or support of the gospel, in the original townships as surveyed, in which such lots shall be situated, and for no other purpose." This law has a special application to the funds derived from the school lands, and is a warrant for the mode of distribution adopted in your district. Where a district is formed partly from a town having this local fund, and partly from a town having none, the only way of carrying the act of 1798 in-

* Sub. 5, sec. 61, page 478, vol. 1, R. 2.

to effect is for the trustees to make out separate assessments for the residue of the teacher's wages, if any, and in graduating the assessment, to give credit to the inhabitants of Fabius to the amount derived from their local fund, as has been done. In cases where an inequality exists in towns out of which double districts were formed, by reason of fines or by raising double the amount of school money in one town and not in the other, &c., the amount received should be considered a common fund for the use of all the inhabitants of the district. Suppose also that by the neglect of the commissioners the public money is withheld from one town. Still the trustees of a double district would pay the money received from the other town to the teacher, and all the inhabitants of the district would share alike. The exception is made in cases which fall under the act of 1798. Some districts are formed with neighborhoods in other states, and in such cases the trustees of course have to make out two assessments for teacher's wages, as you have done. Where a district is formed from two towns or counties, the officers may be located in any part of the district. County and town lines, so far as relates to the district, have no influence: the district lines are alone material in what relates to the organization and government of the district. Where districts are formed with other states, the law has specially provided, that one trustee at least shall be chosen in the part of the district lying in this state, (sec. 27*) for the reason that the other part of the district is beyond the jurisdiction of the state.

(ANONYMOUS.)

The real estate of ministers of the gospel is exempt from taxation to a certain amount, only when occupied by them.

By A. C. FLAGG, *July 7, 1827.* By the 3rd section of the act† for the assessment and collection of taxes, the real estate of a minister of the gospel is exempt from taxation to a certain extent, "if occupied by him." In the case of Clark Kenyon, jun., as I understand from your letter, he is the tenant of the minister, and the occupant, and therefore liable to be taxed for the farm.

* Sec. 95, page 485, vol. 1, R. S. † Sub. 8, sec. 4, page 388, vol. 1, R. S.

The inhabitants of joint school district No. 15, lying partly in the town of Warwick, and partly in the town of Goshen, *against* the Commissioners of Common Schools of said towns.

In altering school districts lying partly in two or more towns, a majority of the commissioners of each town must concur.

This was an appeal from the proceedings of the commissioners of common schools of the towns of Warwick and Goshen, in dividing school district No. 15, with the consent of only one of the commissioners of the former town.

By A. C. FLAGG, *November 13, 1827.* In this case it is contended that the division of No. 15 is invalid, for the reason that it was a district formed from parts of Goshen and Warwick, and that a major part of the commissioners of each town did not assent to the division of the old district No. 15. It appears by the affidavit of H. M. Hopkins, one of the commissioners of Goshen, that Mr. Shepherd, one of the commissioners of Warwick, dissented from the division, and "contended that the law required the consent of a majority of the commissioners of both towns, (to wit, two,) which opinion was overruled, and he, the said Shepherd, although opposed to the division, signed the proceedings," &c.

William Shepherd, the above named commissioner, testifies, "that from the site and location of the said district, he is entirely of the opinion that it ought not to be divided, and that he signed the proceedings under the representation that his withholding his name could make no difference, if the construction of the law by the other commissioners was right; although contrary to his deliberate and decided opinion at the time." It appears also that only one of the commissioners of Warwick was in favor of the division, and that he and the three commissioners of Goshen constituted the body which voted that they had a right to act for the two towns. No district can be formed or altered without the assent of two at least of the commissioners of the town in which the district is situated. In the formation of double districts, the commissioners represent their respective towns; and the rights of those whom they represent cannot be voted away by commissioners who represent the inhabitants of another town. The law does not authorize the question to be settled by a joint ballot of the commissioners of two or more towns. The law says, "Whenever it may be convenient and necessary to form a district out of two or more adjoining towns, it shall and may be lawful for the commissioners aforesaid, or the major part of them, from each of such adjoining towns, to

form such district, and to alter and regulate the same.”* It is clear from the language of this act, that the assent of a major part of the commissioners of each town interested is requisite to form or alter a district. It is satisfactorily proved that although Mr. Shepherd signed the proceedings, he did not consent to the division of the district, and this fact is shown by the witnesses of both parties. The resolution which was adopted, that three commissioners from Goshen and one from Warwick, had a right to alter the district, seems to show that Mr. Shepherd did not consent; and hence the resolution to alter it without his consent.

It is therefore decided that the proceedings of the commissioners, in dividing district No. 15, be annulled.

(ANONYMOUS.)

If a farm lies partly in two school districts, it is to be taxed in the district in which the occupant resides.

By A. C. FLAGG, *December 10, 1827.* By looking at the 25th section of the school act of 1819, page 17, you will see that it is made the duty of trustees to assess “all the taxable inhabitants residing in such district, according and in proportion to the valuations of the taxable property which shall be owned or possessed by them within such district, or which being intersected by the boundaries of such district, shall be so owned or possessed by them partly in such district and partly in any adjoining district.”†

The principle is, that where a line between two districts runs through a man's farm, he shall be taxed for the whole of his farm in the district where his house stands or where he resides. On this point the law above quoted is clear, and such has been the construction given to it.

The same principle governs in the town assessments, as you may see by the 8th section of the act of 1823, which provides that “where the line between two towns divides any occupied lot or farm, the same shall be taxed in the town where the occupant lives, provided he or she lives on the lot.”‡

(ANONYMOUS.)

Conditional certificates of qualification cannot be given to teachers.

By A. C. FLAGG, *December 16, 1827.* The school act does not recognize conditional certificates to be given to teachers.

* Sec. 21, page 471, vol. 1, R. S.

† Sec. 76, page 492, vol. 1, R. S.

‡ Sec. 4, page 389, vol. 1, R. S.

While a feeling very properly prevails to extend the benefits of the school money to those districts the least able to support a school, it is important that inspectors should do all in their power to elevate the standard of instruction in the common schools. Much is left to their sound discretion, and much depends on a rigid discharge of their duties. I cannot authorize any relaxation of the mode of giving certificates; the law does not justify it.

The Commissioners of Common Schools of the town of Milton, *ex parte*.

Children in poor-houses are not to be included in the annual reports of school districts.

This was an application for the direction of the Superintendent with respect to an apportionment of school moneys to district No. 3 in the town of Milton, the trustees having included in their annual report all the children in the county poor-house, which was situated within the boundaries of the district.

By A. C. FLAGG, *April 26, 1828*. The 21 children belonging to the poor-house ought not to be numbered for the purpose of drawing money into the district where the poor-house happens to be located. A deduction from the number of children reported by district No. 3 must be made accordingly.*

The Commissioners of Common Schools of the town of Fabius, *ex parte*.

The proceeds of the school fund of the town of Fabius must be applied by the trustees of the fund as the inhabitants may direct.

But trustees of school districts must apply such proceeds to the payment of qualified teachers.

This was an application for the direction of the Superintendent with regard to the appropriation and expenditure of the proceeds of the local school fund of the town of Fabius.

By A. C. FLAGG, *July 12, 1828*. The 24th section of the new act, p. 8, expressly provides that no moneys shall be paid to a district unless a teacher duly qualified has been employed for three months at least, "and that all moneys received from the commissioners during that year [as appears by the report] have been applied to the payment of the compensation of such teacher," see also form for the commissioners' report. You must certify that "the money has been expended in paying teachers

* By the 6th section of the act of 25th April, 1831, it is provided that it shall "not be lawful for the trustees of any school district to include in their annual returns the names of any children who are supported at a county poor-house."

duly appointed and approved in all respects according to law." The trustees are not allowed to pay the public money to a teacher unless he is qualified as the law requires. The fourth section of the act of 1813, chap. 100, p. 157, session laws, provides that the proceeds of the school lot in Fabius shall be applied by the trustees of the fund in such manner as the town meeting shall under the law direct. If this money is paid over to the commissioners of common schools they must apply it as they do the other moneys which come into their hands for the use of schools, to the payment of the wages of qualified teachers. And so with the trustees of the district, if it is paid to them. The town by a vote might possibly through the trustees of the town fund, vary the application. But if a vote is passed to pay it to the district trustees, they must be guided in its application by the provisions of the law under which their office is created, and in which their duties are prescribed. But it is not probable that your town has or will pass a vote to apply the local school fund to the payment of the wages of teachers who are not qualified according to law.

The Trustees of school district No. 4 in the town of Hounsfield, *ex parte*.

Private property cannot be taken for a site for a school-house without the consent of the owner.

This was a case in which the title to the site of the school-house in district No. 4 in the town of Hounsfield, proved defective, and the owner of the land threatened to re-enter.

By A. C. FLAGG, *October 15, 1828*. It appears by your letter, that the district has no title to the fee of the land, nor a lease for the site of the school-house. You are therefore in the power of the person who owns the premises on which the school-house stands. The district has no power over individual property in obtaining a site for a school-house; if they fix a site and the title fails, they must seek a site where the land can be procured. You are in the situation of a district without any site for a school-house, unless you can procure the fee or a lease of the land on which your house stands. Your best course is to compromise this question with the owner of the farm, who if he is a reasonable man will do what is just in the premises. If the trustees can procure the land, or hire it, then the site is well enough. If they cannot, the district can vote a site elsewhere. The prohibition against changing the site of a school-house does not apply to a case of this nature.

The Trustees of school district No. 5 in the town of Pompey, *ex parte*.

A non-resident owner is taxable for land occupied by an agent: but not if occupied by a tenant: and if it is unoccupied, he is taxable for so much only as is cleared and cultivated.

This was a case in which a person living out of the boundaries of district No. 5 in the town of Pompey, owned a lot of land within that district, the lot being occupied, but not by him.

By A. C. FLAGG, November 19, 1828. If the non-resident owner of the 250 acres of land in your district has an agent living on the premises, then the owner of the land can be taxed for it under sec. 77, as occupying it by his agent. If the person living on the premises rents the land as tenant, then he, the tenant, is liable to be taxed for the premises, that is for the whole lot. When a lot is not occupied by an agent or servant, then the owner, if a non-resident, is to be taxed for such parts only as are "actually cleared and cultivated," under sec. 78.*

The Trustees of school district No. 1 in the town of Jamestown; *ex parte*.

Trustees of school districts may renew a warrant to collect a tax, whether issued by themselves or their predecessors.

If a district meeting votes to renew a warrant and collect a tax, the trustees may regard it as an original vote to raise the amount specified, and issue a new warrant for its collection.

Taxes can only be voted by the inhabitants of school districts for the objects enumerated by law.

On the 19th May, 1827, the inhabitants of school district No. 1 in the town of Jamestown, voted a tax of ten dollars "to defray contingent and other expenses, at the discretion of the trustees." The tax-list was made out with a warrant annexed, and delivered by the trustees to the collector for collection; but through the neglect of the latter, no part of the amount was collected. On the 15th November, 1828, the inhabitants of the district voted that the warrant for collecting a tax of ten dollars "for defraying necessary expenses at the discretion of the trustees," as voted at a district meeting on the 19th of May, 1827, be renewed, and put into the hands of the collector to be collected forthwith. The trustees of the district, doubting whether the old

* The principle of this decision is fully sustained by the construction of the law by the Supreme Court in the case of Dubois vs. Thorne and others, 7 Wendell, 518, in which a lessee of a non-resident owner was held liable for a tax for part of a lot, and two sub-tenants for the parts occupied by them. The court said that "the mere ownership of the property, without occupation by himself, his agent or servant," was not sufficient to charge the non-resident owner with the tax.

warrant should be renewed, or whether a new tax-list should be made out, applied to the Superintendent for his direction.

By A. C. FLAGG, November 23, 1828. Trustees of school districts for the time being may renew a warrant for the collection of a tax, whether issued by themselves or their predecessors, and without a vote of the district meeting; but a renewal must be for the same sum, and against the same individuals. The vote of Nov. 15th would authorize the trustees to levy the same as a new tax on the present inhabitants of the district. It is a new tax and must be made out against the present taxable inhabitants of the district in the same manner as any other tax. These opinions are based upon the presumption that the district meeting had a right to vote this tax. The powers of district meetings are defined in section 61 of the Revised Statutes, relating to common schools. The meeting should vote a specified sum for a specified object, and for such objects only as are embraced and authorized by subdivision 5 of the above section. A vote for a sum to "defray necessary expenses at the discretion of the trustees," is altogether too loose and vague a proceeding in matters relating to the assessment of taxes, particularly where the statute has defined the objects for which a district meeting may vote taxes.*

The Trustees of school district No. 2 in the town of Brighton, *ex parte*.

A bell is not a necessary appendage to a school-house, and cannot be provided by a tax.

The inhabitants of school district No. 2 in the town of Brighton procured, with the consent and approbation of the trustees, a bell for the district school-house. It was originally designed to raise by subscription the amount required to cover the expense; but at the ensuing annual meeting it was unanimously resolved that a sum sufficient to pay for the bell and make some necessary repairs on the school-house should be raised on the taxable property of the district. The cost of the bell was \$21.50, and an additional sum of \$8.50 was voted for repairs, amounting in the aggregate to \$30. In consequence of the refusal of some

* The Supreme Court, in the case of Robinson vs. Dodge and others, decided that the inhabitants of a school district had no right to delegate to the trustees any discretionary power as to the aggregate amount of the tax to be collected. The court said, they (the trustees) "are required to make a rate-bill or tax-bill to raise the sum voted for, which implies a vote for a definite sum."

The act of 1814, under which the decision of the court was pronounced, differs somewhat from the Revised Statutes in the language of the provision relating to the imposition and collection of taxes for school district purposes, but not so much so as to require a different rule of construction.

of the inhabitants who were not present at the annual meeting, to pay their proportion of the tax, the trustees of the district applied to the Superintendent for his direction.

By A. C. FLAGG, *November 25, 1828.* The statute relating to common schools authorizes the district meeting to vote a tax to build a school-house and to furnish the same with "necessary fuel and appendages," and the question is whether a bell is a necessary appendage to a common school-house. It is not usual to furnish district school-houses with bells; it may be convenient in your particular case to have one; but I cannot believe that a bell was contemplated by the legislature as among the objects authorized to be furnished for a school-house. It is therefore my opinion that it is not a necessary appendage within the meaning of the statute, and that a tax cannot be voted to provide one.

The Commissioners of Common Schools of the town of Redhook, *ex parte.*

A person who is assessed to work on the highway is entitled to vote at school district meetings.

This was an application from the commissioners of common schools of the town of Redhook, for the opinion of the Superintendent with regard to the right of a person who works on the highway, or pays a commutation therefor, to vote at school district meetings.

By A. C. FLAGG, *November 28, 1828.* Assessments to work on the highway entitle a person to vote in a school district. The phraseology of the old election law was similar to this; and instances must have fallen under your notice where persons would pay a highway tax to entitle themselves to a vote. The old constitution required that persons voting on a tenement, should have "actually paid taxes to the state," and in the act for regulating elections passed March 29, 1813, sec. 10, p. 253, 2 vol. rev. laws of 1813, it is declared that every person having paid taxes on the highway, &c., "shall be considered as having paid taxes to the state" for the purposes of that act.

The Commissioners of Common Schools of the town of Locke, *ex parte.*

The provision requiring three months notice to trustees of an alteration in their school district is intended for their protection, and to that end is to be benignly construed.

In September, 1827, Messrs. Reuben Stearns and Nathaniel W. Ingraham were set off from district No. 10 in the town of

Locke, and attached to district No. 9 in the same town. In November ensuing, Ingraham was elected a trustee of the latter district, and officiated in that capacity until November, 1829. There was no evidence on record of the alteration above mentioned having been made with the consent of the trustees of district No. 10, or that any notice had been served on them by the commissioners; but they were notified of the intention of the commissioners to set off the two individuals referred to, and of the time and place of meeting for the purpose. In November, 1828, a tax was voted in district No. 9 to build a school-house, when a doubt was raised by one of them, whether they had been legally set off from No. 10. The facts were submitted to the Superintendent for his opinion.

By A. C. FLAGG, *December 26, 1828.* Messrs. Stearns and Ingraham petitioned the commissioners of common schools to be detached from district No. 10 to No. 9, and in September, 1827, their petition was granted; and Ingraham was elected a trustee of No. 9, in which capacity he served until November, 1828. The alteration of district No. 10 by attaching them to No. 9, appears to have been recorded in the usual manner under the old law. Whether the trustees of No. 10 were originally willing to gratify Messrs. Stearns and Ingraham in their request to be annexed to No. 9 or not, and whether notice was served or not, cannot after so long a time affect the relations of Messrs. S. and I. with the trustees and inhabitants of No. 9. The provision requiring the consent of trustees to detach persons from their district, and holding them three months without such consent, was made for the benefit and protection of the trustees, to whose injury the alteration might operate. For instance, trustees might have made contracts and incurred responsibilities, which would operate oppressively, if some of the most wealthy were detached before they had time to collect the tax. In such cases the trustees are effectually protected by their veto upon the formation of the district for three months, in which time they can collect their tax. And to carry this intention into effect, the act should be benignly and favorably construed for the protection of the trustees. But in relation to Messrs. Stearns and Ingraham, none of these reasons can avail them; they desired to be set to No. 9, and were gratified. The trustees of No. 10, from their silence in the matter, seem to have acquiesced; and as the trustees have not sought to retain Messrs. S. and I., and more than a year has elapsed, they must be considered as having been legally attached to No. 9.

The Trustees of school district No. — in the town of Walkill, *ex parte*.

Trustees of school districts cannot transfer to a teacher the power of enforcing the collection of his wages.

Teachers are not allowed fees on sums voluntarily paid to them for tuition.

The trustees of school district No. —, made a contract with a teacher, by which he agreed to collect his own wages, with the understanding that he was to receive the usual fees for collection. The question submitted was whether, in either of these respects, the contract was valid.

By A. C. FLAGG, *December 30, 1828*. The trustees are to contract with and pay the teachers; and those who send to the school are bound to pay the trustees the sums for which they are respectively liable. But the authority to coerce payment is not given to the teacher: persons indebted may pay to him the sums due from them, and his receipt for such payment is valid on the contract which the trustees have made with him. Such collections are allowed by the law. But the district has a collector, and if the sums due the teacher are not voluntarily paid to him, then it is the duty of the trustees, according to subdivision 12, 13 and 14, sec. 75, to ascertain the amount due from each person, by an examination of the school lists, to make out a rate-bill, adding 5 per cent. for collector's fees, and to give the bill and warrant to the collector. This is the only allowance of fees which can be made for collecting. In reference to collections by the teacher, I find the terms of the old law were, that "the wages of teachers shall be collected by the trustees, unless such teachers shall agree to collect the same," &c. The terms of the law now are, "It shall be the duty of trustees, and they shall have power" "to collect the residue of such wages, excepting such sums as may have been collected by the teachers," &c. The old law authorized an agreement with the teacher to collect his own wages; the new law tolerates such collections, but does not authorize the trustees to transfer to the teacher the power of coercing payment. It is therefore my opinion that the trustees must collect the wages, and that they have no right to make an allowance to the teacher for collecting.

(ANONYMOUS.)

Non-residents are liable to be taxed for pastures and meadows, as land cleared and cultivated.

By A. C. FLAGG, *January 3, 1829*. The question has been submitted whether salt meadows, from which the owners secured the grass, but which were not otherwise improved, could be assessed in a school district under the 78th section of the revised

school act, the owners being non-residents of that district. Under the old act, cultivated land having no person actually occupying and residing upon it, could not be assessed to a non-resident owner. The 78th section, therefore, is a new provision, evidently intended by the legislature to make all productive real estate contribute in taxes for the erection of school-houses, &c., in the district where it is situated. The person who owns a lot in an adjoining district on which there is no tenement, and which he improves as pasture land or as meadow land, is clearly liable to be taxed for it now; under the old law it was exempt. The owners of the salt meadow improve their land in the same manner, and for similar purposes. Under the old law it could not be taxed; but it is liable to taxation under the Revised Statutes.

Thomas Cooper and others, inhabitants of school district No. 25 in the town of Chazy, *ex parte*.

Persons annexed to a school district, after the school-house has been built and paid for, cannot be compelled to contribute to the expense of its construction.

In the year 1825, school district No. 25 in the town of Chazy was formed and organized according to law. During the ensuing year, a school-house was built and paid for by a tax on the inhabitants of the district. In the year 1828, several persons were set off from school district No. 2 in said town, to district No. 25, by the commissioners of common schools, without the consent of the trustees of the latter. This was an application to the Superintendent of Common Schools for an order to compel the persons thus annexed to district No. 25 to pay their proportion of the expense of building the school-house, or to set them back to district No. 2.

By A. C. FLAGG, *January* 12, 1829. District No. 25 in Chazy was organized, and after having built a school-house was enlarged by adding several persons to it without the consent of the trustees. The question is, whether the persons thus set to No. 25 can be assessed for any portion of the school house which had been erected and fully paid for before they became members of the district. There is no law for taxing them under such circumstances.

They can be set back to the district from which they were taken, if, after a hearing of both parties, it is deemed proper. If the persons aggrieved wish a decision on this point, they must give notice as required by the regulations in relation to appeals.

The Inspectors of Common Schools of the town of Ballston, *ex parte*.

Teachers in joint school districts may be examined by the inspectors of either town.

This was an application from the inspectors of common schools of the town of Ballston for the opinion of the Superintendent on the following case: A teacher was employed in a school district lying partly in Ballston and partly in an adjoining town, and after being examined by the inspectors of the former, was found deficient and was refused a certificate of qualification. A few days afterwards he applied to the inspectors of the adjoining town, who examined him and gave him a certificate.

By A. C. FLAGG, *January 28, 1829*. The inspectors of either town may give a certificate to the teacher of a double district, (sec. 51.) The certificate, therefore, is good. If the teacher is decidedly incompetent, his certificate may be annulled by the inspectors of either town interested in the school. But this might lead to an unpleasant controversy, and ought not to be resorted to unless the district is to suffer by the incompetency of the teacher.

The Trustees of school district No. — in the town of Hammond, *ex parte*.

Children are to be numbered in the districts in which their parents reside. If children are boarded in a district to attend school, they must be numbered where their parents reside.

This was an application from the trustees of school district No. — in the town of Hammond for the opinion of the Superintendent in the following case: In one of the school districts of the town no winter school was kept, and several of the inhabitants boarded their children in district No. — for the purpose of sending them to school, which they attended in the latter district from the 1st of November, 1828, until February, 1829. The question submitted to the Superintendent was, whether those children should have been enumerated in district No. —, on the last day of December, 1828, or whether they should have been enumerated in the district in which their parents resided on that day.

By A. C. FLAGG, *February 6, 1829*. Children must be numbered in the district where their parents reside; and if the children board and attend school in another district, this does not change their residence; but they must still be numbered where their parents reside.

The Trustees of school district No. 4 in the town of Somerset, *ex parte*.

If, for causes not to be controlled, a school has not been kept three months during the preceding year by a qualified teacher, the district will be allowed a share of the public money.

School district No. 4 in the town of Somerset was formed in the early part of the year 1828. It was organized, a school-house was erected, and a teacher duly inspected was engaged for five months, and a school was commenced on the first day of August. Soon afterwards the district became so unhealthy that there were scarcely persons enough within it to take care of the sick, and the school was broken up about the 20th of September, and the teacher discharged. This state of things continued until the first of November, when it was found impossible to procure a qualified teacher to commence a school before the first of January. The provision of the statute which requires school districts to have a school taught three months during the preceding year by a qualified teacher, in order to entitle them to a share of the public moneys, was not complied with. This was an application to the Superintendent from the trustees of the district, through the commissioners of common schools of the town, to authorize the district, under the peculiar circumstances of the case, to receive a share of the public moneys.

By A. C. FLAGG, *February 7, 1829*. It appears by your statement that the trustees of district No. 4 employed a qualified teacher for five months; but from the extraordinary sickness which prevailed, the school was broken up before three months were completed. As the trustees acted in good faith and took the steps necessary to comply with the law, and as the failure was from causes beyond their control, and involving no neglect on the part of the trustees or the district, it is proper, in my opinion, for these special reasons, to pay to district No. 4 its share of the school moneys.

The inhabitants of school district No. — in the town of Villenova, *ex parte*.

All children residing in a district are to have the benefit of the public money, if they attend school, without reference to their ages.

This was an application from the inhabitants of school district No. — in the town of Villenova, for the opinion of the Superintendent as to the application of the public money for the benefit of children attending school who were under the age of 5 years.

By A. C. FLAGG, *February 16, 1829*. The public money

being paid to the teacher is shared equally by all who attend school, without reference to their ages. All residents of a district are entitled to a privilege in the school whether they are over 16 or under 5. But scholars belonging to other districts, or whose residence is not in your district, have no right to a share of the school moneys.

The Trustees of school district No. 17 in the town of Hector, *ex parte*.

A person set off from one school district to another is not entitled to any part of the value of the school-house or property of the district from which he is detached.

The value of the school-house and other property is only to be apportioned when a new district is formed.

This was an application from the trustees of school district No. 17 in the town of Hector to the Superintendent to ascertain whether an individual who was set off from that district to an adjoining one by the commissioners of common schools, was entitled to receive from the former his proportion of the value of the school-house and other property belonging to it.

By A. C. FLAGG, *February 16, 1829*. A person set off from a school district is not entitled to any remuneration for his interest in the school-house or other property belonging to the district from which he is detached. The apportionment of the value of the school-house, &c., by sec. 67, is to be made only "when a new district shall be formed from one or more districts," &c. But setting one or more persons from one old district to another, does not give a claim to those detached to remuneration for the value of the school-house and other property.

John Reedy and others *against* the Commissioners of Common Schools of the town of Germantown.

The Superintendent will not interfere with the general arrangement of school districts in a town, excepting in special cases where cause is shown.

This was an appeal from several inhabitants of the town of Germantown from the proceedings of the commissioners of common schools in arranging the school districts. The application for the interposition of the Superintendent was not grounded upon the injustice or inconvenience of any particular case, but proceeded upon the allegation that the general plan was injudicious.

By A. C. FLAGG, *March 2, 1829*. By the 20th section of the revised school act, it is made the duty of the commissioners of common schools "to divide their town into a convenient num-

ber of school districts, and to regulate and alter such districts." They are chosen by the town for this express purpose: they are acquainted with the local situation of the territory, and having a view of the whole ground, their official acts are entitled to much respect, unless they are shown to have been produced by interest, prejudice, or some other improper influence.

It is presumed that the commissioners exercised their best judgments and acted from honest motives. If, however, their acts operate to the inconvenience or prejudice of individuals, the grievances of such individuals are entitled to redress, so far as is consistent with the rights of others and the general good. By the 11th sec. of the revised school act, any person "conceiving himself aggrieved," &c., has a right to appeal. Now a person might very honestly differ in opinion with the commissioners as to the general organization of the town into districts: he might believe that a different plan would have been better, and might therefore appeal, "conceiving himself aggrieved;" but in such case the character of the grievance being a mere difference of opinion, would not be such as to induce the Superintendent to break up the entire organization of a town, which had been made by the proper authorities, after full examination and due deliberation. So far as relates to the general organization of a town, much reliance must be placed, from the nature of the case, upon the decision of the commissioners.

The appeal is dismissed.

The Commissioners of Common Schools of the town of Ballston, *ex parte*.

Errors of form in the annual reports of school districts may be corrected.

This was an application from the commissioners of common schools of the town of Ballston for the direction of the Superintendent with regard to a case in which the trustees of a school district had failed to make their annual report in compliance with the form prescribed, though the substantial matters required by law were fully shown.

By A. C. FLAGG, *March 11, 1829*. In all cases where the districts have complied substantially with the law, the trustees may be allowed to correct their reports as to mere matters of form at any time before the money is actually apportioned and paid. A district ought not to lose its money in consequence of a misconception of the law, or a mere clerical error on the part of some of its officers. The commissioners ought to consider themselves the guardians of the equitable rights of the districts, and when they discover an error as to form, which if not corrected would deprive the district of its just share of the public

money, they should point it out to the trustees, to the end that it may be corrected and the fair rights of the district secured.

The inhabitants of school district No. 7 in the town of Champion *against* the Commissioners of Common Schools of said town.

When a new district is formed, the school-house and other property of the district, from which it is taken, must be appraised and apportioned at the same time.

This was an appeal from the proceedings of the commissioners of common schools of the town of Champion in relation to school district No. 7 in said town. This district was divided, and a new district formed, without appraising and apportioning the value of the school-house and other property belonging to the former. Three months subsequent to the formation of the new district, the commissioners, on the application of some of the persons annexed to it, re-assembled and appraised the school-house and other property belonging to district No. 7, and apportioned to the inhabitants set off to the new district, their proportion of the value of said house and property. From this proceeding an appeal was brought.

By A. C. FLAGG, *March 13, 1829.* The language of the statute is, that the commissioners in forming a new district, "shall ascertain the amount due to such district, at the time of forming such new district." The intention of the law is to have the valuation of the house, &c., made at the time of dividing the district. There are some reasons besides the plain terms of the statute, in favor of having the valuations made at that time rather than at any other. It is just and fair that the old district should know at the time of the division whether a tax is to be levied to pay for a portion of the school-house; because in many instances the inhabitants would remonstrate against a division of the district if they knew that a tax would be required to pay those set off for a part of the school-house, when, without such knowledge, they might silently acquiesce in the division. It is also due to those retaining the school-house, that they should know whether they are to be taxed, as it might form the principal reason for an appeal against the division of the district; and if the principle were established that the valuation might take place at any time, designing persons might get the commissioners to divide a district, and postpone levying the assessment until after the thirty days allowed for appealing from the division, and thus take the inhabitants by surprise, and deprive them of their fair redress in the ordinary way. An additional reason against deferring the valuation of the school-house is,

that another portion of the inhabitants of the district retaining the house, might be detached to other adjoining districts, and leave the proportion of tax still heavier upon those who remained. It is my opinion, therefore, that in forming a new district from two or more districts, the valuation of the school-house must be made by the commissioners at the time of forming the district, if there is a school-house to which the district has an undisputed title; and if the commissioners omit to make the necessary valuation, they cannot make the appraisement at a subsequent time without an order from the Superintendent of Common Schools, who will open the whole case by allowing an appeal from the proceedings of the commissioners, both in making such appraisement, and in forming the new district.

Decision accordingly.

The Trustees of school district No. 3 in the town of Wilmington *against* the Inspectors of Common Schools of said town.

If an inspector of common schools is employed as a teacher, he must be examined like all other teachers.

An intemperate man ought not to be employed as a teacher of common schools.

The trustees of school district No. 3 in the town of Wilmington employed as a teacher an individual who had been six years engaged in giving instruction, who had received at different times certificates of qualification, and who was, at the time he was so employed, an inspector of common schools of the town. At a meeting of the commissioners and the two other inspectors, called for the purpose of examining him, they refused to grant him a certificate upon the ground that he was intemperate. From this decision the trustees of district No. 3 appealed.

By A. C. FLAGG, *March 23, 1829*. By section 46 of the statute, it is made the duty of the inspectors to ascertain the qualifications of the teacher "in respect to moral character" as well as learning and ability. The fact that the teacher is an inspector himself, and that he has had certificates before, does not vary his case; he, as well as all other teachers, must be tested by his qualifications and his moral character. He may have become intemperate since he was examined, or former inspectors may not have known the fact. The only question on this point should be, is he now addicted to intemperance? If so, he is not a proper person to be continued as a teacher of your children. And in my opinion, the inspectors cannot be too rigid on this point.

(ANONYMOUS.)

When fuel is furnished in kind, it must be apportioned according to the time each scholar has attended school.

The question submitted to the Superintendent in this case, was whether each scholar should furnish an equal quantity of wood, without regard to the time he had attended school, or whether it should be apportioned according to the time of attendance: the district not having voted a tax to purchase fuel.

By A. C. FLAGG, *March 24, 1829.* By the 84th and 85th sections, the fuel is to be graduated according to the number of children sent to school. They are to pay in the same ratio that they pay for tuition, and this has been established as a just measure of apportionment. If the district requires an assessment according to property, they can then vote to provide the fuel by a tax upon the district. The apportionment by the scholar may in some cases operate severely; but if a poor man is unable to pay tuition, and sends his child but half the term, ought he to be taxed as much for fuel as the person who is able to send three or four scholars for the same period, or for the whole time? It is undeniable that in hundreds of cases a person with a large number of children is unable to send them all to school, and he sends one or two out of four or five who ought to attend, and is thus compelled by his poverty, to make them take turns in getting a common school education. Would it be just for such a person to be charged as much for fuel as his more wealthy neighbor, who is abundantly able to keep all his children constantly in school? Certainly not.

The Trustees of school district No. — in the town of Chester, *ex parte.*

When a new district is formed, and a sum of money is received as its proportion of the value of the school-house of the district from which it is taken, this sum must be applied to the erection of a school-house in the new district, and in reduction of the taxes of the persons on account of whose property it was received.

A new school district was formed in the town of Chester by a division of districts No. 1 and 2. A Mr. Mead was set off from No. 2, and the sum of \$5 was adjudged by the commissioners of common schools to be due from that district to the new, on account of the property of Mr. Mead, and as his proportion of the value of the school-house. The question submitted, was whether this sum was to be applied to his exclusive benefit.

By A. C. FLAGG, *March 30, 1829.* By section 69, when a new district is formed from an old district having a school-house, a proportional part of the value of the house is to be paid

to the trustees of the new district, and by them applied to the erection of a new school-house. But if a tax is to be raised in addition for the school-house, the moneys received from the old district "shall be allowed to the credit of the inhabitants who were taken from the former district in reduction of any tax that may be imposed for the erection of a school-house." The proportion ascertained by the commissioners, according to sec. 68, as coming to the new district as the proportion of Mr. Mead's property, is \$5. Therefore in making your assessment of the tax to build a school-house, you must credit Mr. Mead with this \$5, and the same course must be taken with all those who were set off from the other district. If the amount credited exceeds the assessment of Mr. Mead, or any other individual, that excess goes for the benefit of the whole district; the trustees being required to apply it for the procurement of a school-house, and as there is no provision to apply any of it to the use of individuals except in reduction of taxes for the school-house, it cannot be paid to the individual.

The Trustees of school district No. — in the town of Martinsburgh, *ex parte*.

Unless some person claims a reduction of his valuation, trustees are not required to give notice of the assessment of a tax.

This was an application from the trustees of school district No. — in the town of Martinsburgh, for the opinion of the Superintendent as to the necessity of giving notice of their intention to assess a tax, in order that those who intended to claim a reduction in the valuation of their property, might come in and avail themselves of the provisions of the statute in such cases.

By A. C. FLAGG, April 20, 1829. A taxable inhabitant can claim a reduction before the trustees make out the assessment; because by sec. 79, the valuation is to be taken from the assessment roll of the town. It is therefore from the assessment of the town that he claims a reduction. When such claim is made, the trustees are to proceed in the same manner as the assessors are required to proceed, as you will see by vol. 1 R. S. page 392. You are to make out the assessment roll, leave it with one of the trustees for 20 days, giving notice thereof in 3 or more places in the district; and then the trustees must meet agreeably to sec. 22, same page, and adjust the assessment.

If no person claims a reduction, then the trustees can make out the assessment at once, conforming to the town assessment. In such case the notices are not required; the inhabitants "know how and for what they pay their money," because they vote the

tax for the specific object, before the trustees are authorized to make the assessment.

The Trustees of school district No. — in the town of Portage, *ex parte*.

If the trustees of a school district expend money for repairing the school-house without being authorized by the inhabitants; a tax to cover the expenditure may be collected, if voted at a subsequent time.

The trustees of school district No. — in the town of Portage, finding the school-house out of repair, expended the sum of fifteen dollars for the purpose of putting it in order, without any authority from the inhabitants, and paid the amount out of their own pockets. At the next annual meeting of the district, the facts were submitted to the inhabitants, who voted a tax equal to the amount expended by the trustees, for the purpose of reimbursing them. By mistake the tax was not collected within the time prescribed by law, and a special meeting having been called, the same amount was again voted for the same purpose. Some of the inhabitants threatened to resist the collection of the tax upon the ground that there was no authority under the circumstances to vote it; and the opinion of the Superintendent was solicited with a view to an amicable adjustment of the difficulty.

By A. C. FLAGG, May 4, 1829. The tax voted under the circumstances set forth in the application is legal, and the collection of it is evidently just and equitable, and cannot be evaded. The district might have refused to vote the tax on the ground that the expediency of repairing the house should have been submitted to the meeting before it was done; but having voted the tax, the district meeting has sanctioned the necessity of the repairs, and the propriety of the conduct of the trustees: the meeting had a perfect right to vote the tax, and it is the duty of the trustees to collect and pay it to those who have made the repairs for the benefit of the district.

Amasa B. Gibson and others, of the town of Crownpoint, *ex parte*.

If school moneys apportioned to school districts cannot be recovered of the commissioner who received them, the loss falls on the districts.

In the year 1828, one of the commissioners of common schools of the town of Crownpoint received the school moneys set apart for that town; but no part of the amount so received was paid over to the school districts. This was an application to the Superintendent from some of the inhabitants of the town, to ascertain what remedy they had against the commissioner.

By A. C. FLAGG, *May 4, 1829.* If the old commissioners made an apportionment of the money, then the trustees can prosecute the commissioners, or the one who has the money, under the 90th section of the school law. This proceeding does not change the risk at all, for the districts lose the money if it is not recovered from the individual commissioner. If the money was not apportioned, it ought to have been paid over to the new commissioners; and if withheld, the person so offending is liable to forfeit one hundred dollars, under section 38 of the school law.

The Inspectors of Common Schools of the town of Ripley, *ex parte.*

Inspectors of common schools must determine the degree of learning and ability necessary for a teacher.

This was an application from the inspectors of common schools of the town of Ripley, for the direction of the Superintendent with regard to the following question, viz: Whether any thing short of a knowledge of reading, writing, arithmetic, English grammar, and geography, should be deemed by them a sufficient qualification for a teacher, in order to entitle him to receive a certificate.

By A. C. FLAGG, *May 6, 1829.* The qualifications of teachers are left to the discrimination and judgment of inspectors. They give the certificate, and they ought to be satisfied that it is given to those only whose learning and ability fit them in all respects to instruct common schools. In revising the school law, the revisers inserted a provision that no candidate for teaching should be deemed qualified unless upon examination he should appear to be well instructed in "reading, orthography, penmanship, English grammar, geography, and arithmetic, including vulgar and decimal fractions." This provision however was stricken out by the legislature, and the whole matter is left to the discretion of the inspectors. It is certainly very desirable that teachers should be able to instruct in all the branches above enumerated.

The Trustees of school district No. — in the town of Martinsburgh, *ex parte.*

Trustees of school districts must give notice of the assessment of a tax in all cases where a reduction is claimed, or where the valuations of property cannot be ascertained from the last assessment roll of the town.

This was a case in which a reduction had been claimed by one of the inhabitants of school district No. — in the town of

Martinsburgh, in the amount of his taxable property, a tax having been voted by the district. The reduction was allowed to the amount claimed, and the trustees proceeded to assess the tax, without giving the notice required by law.

By A. C. FLAGG, May 6, 1829. Trustees are to give notice as to assessments in two cases: 1st, when a reduction is claimed, and 2d, when the valuation cannot be ascertained from the assessment roll of the town. You ask, why give notice, if the man claiming a reduction gets all the relief he wants? I answer, because every taxable inhabitant of the district is relatively interested in such reduction. Taxation to be just must be equal. The town assessment is evidence that, as between the inhabitants of a district, the assessment is proportionably just. If you deduct from one, you leave such deduction to be paid by all the rest of the tax-payers of the district: they are entitled to notice, and an opportunity to show that, in justice to them, a reduction ought not to be made in the assessment of the person complaining. When no notice is required, the assessment may be made immediately after the meeting closes, for in this case it is to be observed, that the relative value of all the property has been adjusted by sworn assessors, and this assessment thus made out, is to be adhered to unless the taxable property cannot be ascertained from such assessment roll, or unless a reduction is claimed. As to the assessment roll and tax-list: In towns, the assessors make out the assessment roll; and the supervisors the tax-list, after the amount levied on the town is ascertained. In districts, the trustees know the amount to be collected before hand, and they do in this matter what is done by assessors and supervisors both, in town matters. They first settle the assessment, if there is any question about the town assessment, and then apportion or carry out the tax against each name. If there are ten persons in your district, and all the property for which they are taxed in the town lies within the bounds of the district, then the valuations are to be taken from the assessment roll of the town, (unless some person claims a reduction,) and the tax-list may be made out without notice or delay.

The Trustees of school district No. 19 in the town of Schoharie, *ex parte*.

If a minor is chosen clerk of a school district, and he officiates in that capacity, his acts, so far as the public and third persons are concerned, are valid.

In school district No. 19 in the town of Schoharie, a minor was chosen clerk at the annual meeting of the inhabitants. At a subsequent time a tax was voted to build a school-house at a special meeting, the notices for which were given by the clerk.

Some of the inhabitants contended that the proceedings of the meeting were void, by reason of the non-age of the clerk, and the case was presented to the Superintendent for his decision.

By A. C. FLAGG, *May 13, 1829.* It is represented that in district No. 19, Schoharie, in which a tax has been voted and assessed for a school-house, some of the persons taxed object to paying, on the alleged ground that the clerk of the district was under age. It seems that he was chosen by the district, and allowed to officiate as clerk: his acts, so far as the rights of third persons and the public are concerned, are valid; and in this case particularly, the non-age of the clerk is wholly unimportant, as the question is between the trustees and collector on the one hand, and the taxable inhabitants on the other.*

Joseph Safford and others, inhabitants of school district No. 2 in the town of Ballston, against the Commissioners of Common Schools of said town.

The decisions of the Superintendent are final.

If a school district is established by a decision of the Superintendent, it cannot be dissolved by the commissioners of common schools.

The facts of this case are fully disclosed in the opinion of the Superintendent.

By A. C. FLAGG, *May 16, 1829.* In the case of the appeal of Joseph Safford and others from the decision of the commissioners of common schools of the town of Ballston, in dissolving district No. 2 and annexing the same to other districts, on the 12th day of April, 1828: It appears by the affidavit of Elisha Miller, a resident of said district No. 2, "that this division was unknown at the time it was made, to the deponent, and others aggrieved by the decision, as this deponent is informed and believes, and that the new arrangement is not satisfactory to the inhabitants of either as it now stands. That previous to this being done by the commissioners, some of the inhabitants of these different districts now concerned, were present on or about the last Tuesday of March, 1828, and objected to its being done, and the deponent supposed it was given up, until some months after the deponent heard of the division being made."

It appears also that notice of this appeal has been duly served on the commissioners of common schools, from whom no statement has been received in relation to the number of petition-

* In the case of *Ring vs. Grout*, 7 Wendell, 341, the Supreme Court were of opinion that, although a collector of a school district ought to be a resident of the district, if the inhabitants "should confer the appointment on a non-resident, he would be an officer *de facto*, so that his official acts would not make him a trespasser."

ers for the dissolution of district No. 2, or the reasons which influenced the decision complained of.

It does not appear from the annual reports for several years that districts Nos. 4, 8, 10 and 11 required the additions made to them by the breaking up of district No. 2; nor does it appear that district No. 2 was dissolved on account of any inability to support a school.

The appellants in this case ask for relief not only from the decision of the commissioners in 1828, but from a former decision of the Superintendent of Common Schools, made in 1823, in relation to districts 1, 2 and 11. As the former decision of the Superintendent is thus brought under consideration, it becomes necessary to inquire and ascertain its bearing upon the controversy now under consideration.

That decision, which was recorded in the town clerk's book, August 21, 1823, describes minutely the boundaries of districts No. 1, 2 and 11, and declares that the "territory of district No. 2 shall remain a district to be called number two." This decision was made on an appeal under the 7th section of the amended school act of 1822, which section authorizing such appeal, declares the decision of the Superintendent to be final. If the question which came up before the commissioners in April, 1828, was the same question which agitated the same territory in 1823, and was then the subject of an appeal, and was decided by the Superintendent, what authority had the commissioners to interfere with a question thus decided, and which decision is declared by the law to be final? If the word final were construed to mean only that the question should not be carried up to a higher tribunal, it would not reach the main object for which the act of 1822 was passed; which was the establishment of a tribunal where on an appeal the controversies and litigations in districts should be finally settled and put at rest; and that the parties should not only be protected from the expense of an appeal to the courts, but that the districts should not be again harassed by the same question at another meeting of the commissioners. That such was the main object of the 7th section of the act of 1822, is evident from the language of the report in relation to said section, made by the Superintendent, viz., that this provision was required in order to enable him "to put an end to the controversies submitted to his decision."

The act of the commissioners of April 12, 1828, having relation to the same question which had previously been decided by the Superintendent, is, in my opinion, void and of no effect.

As to the question of restoring the old bounds of districts No. 1 and 2, inasmuch as that was acted upon and settled by a former Superintendent, five years since, under which decision

school-houses have been erected, and district arrangements entered into in reference to the bounds established by that decision, I do not think it is expedient to do more at this time than to declare void the order of the commissioners of April, 1828.

It is therefore decided, that the acts and doings of the commissioners of common schools of the town of Ballston, on the 12th day of April, 1828, in relation to the dissolution of district No. 2, and annexing the inhabitants of said district to districts No. 4, 8, 10 and 11, be and the same is hereby declared to be of no effect.

(ANONYMOUS.)

In making out a tax-list the names of the taxable inhabitants must be given.

"The widow and heirs of A. B. deceased" is not a sufficient designation of the persons to be taxed.

By A. C. FLAGG, *June 8, 1829.* A tax made out against the "widow and heirs of A. B. deceased" is not a proper designation under the statute, which requires a list of the names. Supposing the property to be owned or possessed by the widow after the decease of her husband, the trustees, according to section 76, (as well as sub. 3 of 75,) should have assessed the property to her by name. By sec. 88, the warrant gives authority to collect "from every person in such tax-bill named, the sum therein set opposite to his name," &c.

The Inspectors of Common Schools of the town of Guilderland, *ex parte.*

Inspectors of common schools may refuse to give a teacher a certificate from their personal knowledge that his moral character is not good.

Inspectors may annul a certificate on account of the immoral character of the teacher, although he may perform all his duties in school properly.

This was an application to the Superintendent, from the inspectors of common schools of the town of Guilderland, for the opinion of the Superintendent upon two questions presented to him.

By A. C. FLAGG, *June 8, 1829.* In judging of the moral character of a teacher, the inspector can certainly act from his own knowledge; and if he knows that a person is not of good moral character, it is his duty to refuse to certify for him. The inspector certifies on his conscience, and although he cannot always know whether the candidate is of good moral character, yet he should not certify when he knows the contrary.

Your 2d question is, "can the inspectors annul a certificate, for immoral habits, provided the teacher performs all his official duties well during his school hours?" I answer, they can. The

moral character of the teacher is of the first importance, and if the inspectors have given a certificate to a person of bad habits from want of knowledge of his real character, they ought to correct the evil as soon as it is discovered. The teacher offers himself as one qualified according to law, and if his moral character is not good, he is an impostor, and his certificate ought to be annulled.

The Trustees of school district No. 3 in the town of China, *ex parte*.

A school-house built by subscription may, if under the control of the trustees, be kept in repair by a tax on the property of the district.

In the year 1827, a school-house was built by subscription in school district No. 3 in the town of China, and had been constantly occupied as a district school-house. In April, 1829, a tax was voted for the purpose of repairing it; doubts having arisen as to the legality of the tax, the trustees made application to the Superintendent for his direction in the case.

By A. C. FLAGG, *July 15, 1829*. If the house in your district has been voted as the district school-house, and if it is occupied without interruption as such, and is under the control of the trustees for that purpose, I can see no impropriety in collecting a tax for its repair. If it has been built by voluntary subscription, the district can at least afford to keep it in repair by a tax. If however it is so far under the control of individuals that they can prevent the trustees from using it, it would not be prudent for them to repair it.

(ANONYMOUS.)

All children residing in a school district may of right attend the district school. If a warrant to collect a tax is renewed, the collector in office at the time of such renewal must execute it.

All children attending the district school must be charged at the same rate for tuition, without regard to the studies pursued by them.

If a parent is not wholly exempted by the trustees, he must be charged the full price of tuition.

The following questions were presented for the decision of the Superintendent:

1st. Can the trustees refuse admittance to any child in the district?

2d. Can they renew the warrant to the old collector, and collect dues of last year?

3d. Have they a legal right to make a difference in tuition between scholars studying different branches?

4th. Can they charge different sums for studying the same

branches, between maximum and minimum, having regard to the ability of the parent, or must they charge the full price or nothing?

By A. C. FLAGG, *July 16, 1829.* To your first question, I answer that the trustees cannot refuse admittance to any child whose residence is in the district, if the child complies with the reasonable and proper regulations of the school.

2d. The trustees for the time being can renew a warrant issued by themselves or their predecessors; but the warrant must be executed by the new collector, or the one who is collector for the time being.

3d. All the scholars in the district school must be charged at the same rate. By sec. 75, sub. 12, the trustees are required to ascertain by an examination of the school lists, the "number of days for which each person shall be liable to pay for instruction, and the amount payable by each." And by subdivision 8 of the same section, they are to pay the public money for teachers' wages, so far as it is sufficient, and to collect the residue "from all persons liable therefor." This liability, it seems by the law, is to be graduated according to the number of days sent by each person. The same principle of graduation is established in relation to fuel, by sec. 85, which provides that the proportion of fuel which each person shall be liable to furnish shall be determined "according to the number of children sent by each." By a vote, however, it may be graduated according to property.

4th. The trustees must charge the same rates of tuition to all the inhabitants of the district alike, without reference to the ability to pay, or the studies pursued, unless they think proper to exempt them wholly. The public money (by sec. 75, sub. 8) is required to be paid to the teacher in satisfaction of the total amount of his claim, and necessarily is shared alike by all who have sent to school, without reference to the ability of the parent; and the residue is collected on the principle stated in the above answer to question No. 3.

The Commissioners of Common Schools of the town of Fabius, *ex parte.*

The certificate of the commissioners that more than four hundred dollars is necessary for a school-house, should be given before the additional sum is voted.

This was an application for the opinion of the Superintendent in a case where a school district had voted a tax of more than \$400 for the erection of a school-house, and afterwards applied to the commissioners for the certificate required by law when a larger sum than \$400 is to be raised.

By A. C. FLAGG, *July 17, 1829.* You inquire whether the opinion of the commissioners that a greater sum than \$400 is required for a school-house, should be obtained before, or whether it would answer if obtained after the vote of the district? In my opinion, it should be obtained before the vote, to legalize the raising of more than \$400. To justify the assessment and collection of a tax, the district meeting must have authority to vote that tax. Without the certificate of the commissioners, where is their authority to vote a tax for a school-house of more than \$400? It is not to be found. Section 64 expressly says, "no tax to be voted," &c., shall exceed the sum of \$400 unless the commissioners shall certify in writing their opinion that a larger sum ought to be raised, and shall specify the sum. Until this certificate is made, the district meeting is not vested with the requisite authority to pass the vote for a greater sum than \$400.

The Trustees of school district No. 11 in the town of Schodack, *ex parte.*

If an annual meeting in a school district is neglected, the trustees hold over until the next annual meeting, and until others shall be elected in their places. Accidental vacancies in district offices may be filled at special meetings called by the trustees.

In April, 1827, the annual meeting of school district No. 11 was held, and district officers were regularly elected. In April of the years 1828 and 1829, the clerk of the district neglected to give notices for the annual meeting, and there was no choice of officers in either year at the usual time. In July, 1829, a special meeting of the inhabitants was called by the trustees who were elected in April, 1827, and who had continued to officiate in that capacity during the intermediate time; doubts having arisen as to their right to call a meeting of the inhabitants, or to act as trustees, all proceedings were suspended, and the case was submitted to the Superintendent for his decision.

By A. C. FLAGG, *July 23, 1829.* By sec. 70, district officers hold their offices for one year, "and until others shall be elected in their places." Under this latter provision the district officers hold over in case the annual meeting is neglected or allowed to pass without a choice of officers. The authority to hold over and to exercise the duties of the offices, is as distinctly recognized by sec. 70, as it is in cases of civil offices by chap. 328, entitled "An act to prevent vacancies in civil offices," passed Nov. 27, 1824,* under which law persons have exercised the

* Sec. 9, page 117, vol. 1, R. S.

duties of various offices, such as surrogates, judges, &c., for years after the term for which they were appointed had expired.

The trustees of No. 11 had authority to call district meetings, they having held over under sec. 70. If there are vacancies in any of the offices, they can be filled at a special meeting. If not, the appointment of officers must be at the annual meeting in April.

The Trustees of school district No. — in the town of Salina, *ex parte*.

A non-resident owner occupying a lot by his agent is taxable in the same manner as though he resided in the district.

This was an application for the opinion of the Superintendent in a case, the facts of which are fully stated in his answer.

By A. C. FLAGG, *August* 15, 1829. You inquire whether a non-resident of a district is to be taxed for the cleared land on the whole lot, under the following state of facts:

"A person not living in the town owns within the district a military lot of 550 acres. There are 60 acres improved on it which the owner cultivates by his agents, who live on the lot. The agents have families, and are of course inhabitants of the district."

You are entirely correct in your opinion that the owner is taxable under the 77th section, and this, too, "in the same manner as if he actually resided in the district."

By the old law cultivated farms belonging to non-residents were not taxable for school purposes: the 78th section is new, (see "alterations" p. 40 of the new act) and was designed to reach such lands as are cultivated and improved, but not occupied; and in such cases, and such only, the cultivated or cleared part of a lot is assessed, and that which is wild, or not cleared, is exempt.

The distinction is, that where there is a family residing on the lot, and requiring school accommodations in the district, the whole lot shall be taxed, the same as if the owner resided upon it. But where there is no resident to enjoy these accommodations, and where the owner resides in another district, he shall only be assessed for the number of acres actually cultivated.

Exemption, under the 78th section, as you remark, would be very clear, were there not a resident agent upon the lot. But this makes it equally clear that the owner is liable to taxation for the whole 550 acres, under the 77th section.

Moses Tyler and others, inhabitants of school district No. 2 in the town of Watervliet, *ex parte*.

Trustees of school districts cannot allow any part of the district school-house to be occupied excepting for the purposes of the district school.

In school district No. 2 in the town of Watervliet, the trustees rented an upper room in the school-house to a woman for the purpose of keeping a private school. In consequence of this proceeding, objections were raised by several of the inhabitants, upon the ground that the district school was disturbed, and that the trustees had no authority to appropriate any part of the house to such a use.

By A. C. FLAGG, *August 17, 1829*. In district No. 2, Watervliet, a person is allowed to occupy an upper room of the school-house; the regular school is disturbed, and many of the inhabitants of the district are thereby dissatisfied. The trustees have no authority to place any person in the school-house, except the teachers employed by them for the district, and they ought not to allow a proceeding which is calculated to occasion divisions in the district, when they have the power of applying the remedy. The trustees have the custody of the school-house; but in exercising their authority they must adhere to the law. The custody is given to them for a certain purpose which the law points out, and they are responsible for any abuse of their authority.

The Trustees of school districts No. 7, 9, 10 and 13, in the town of Dover, *against* the Commissioners of Common Schools of said town.

If a bank fails, and the commissioners of common schools have in their hands bills of the bank, received as school moneys, the loss falls on the school districts.

This was an application to the Superintendent for his decision upon a case submitted. The material facts are disclosed in the opinion of the Superintendent.

By A. C. FLAGG, *August 18, 1829*. The treasurer gave the commissioners of common schools of the town of Dover a check on the Middle District Bank in March last, for the amount of the school moneys due the town. The commissioners took the bills of that bank, and on the 4th of April the money was apportioned to the districts, and paid to such trustees as called for it, the bills being then in good credit. Some of the trustees neglected to call for their apportionment until the bank failed, and now refuse to take the bills. The bills on hand are the identical bills received as the school money and apportioned to the districts,

and the commissioners ought not to be held responsible to make good the failure. The law fixes the day for apportioning the money, which is a sufficient notice to the trustees to call for it; if they neglect to do so, and the money is burnt up, or becomes valueless by the failure of the bank, the commissioners ought not to suffer. The loss must fall on the districts or the trustees.

Nicholas Chesebro and others, inhabitants of school district No. 8 in the town of Worcester, against the Commissioners of Common Schools of said town.

In altering school districts, notice ought to be given to the parties in interest, although such notice is not required by law.

Two teachers may be employed in a school district, if it is necessary; but a high school ought not to be set up by the trustees without the concurrence of the inhabitants.

This was an appeal to the Superintendent under circumstances which are fully disclosed in his decision.

By A. C. FLAGG, *August 20, 1829.* In the case of the appeal of Nicholas Chesebro and others, from the decision of the commissioners of common schools of the town of Worcester, it appears that on the 9th of May, 1829, the commissioners divided district No. 8 in said town, and formed a new district, which is designated as No. 6. District No. 8 had 91 children between 5 and 16 before the division, 55 of whom remain in No. 8, and 36 in No. 6.

The Superintendent is called upon in this case to annul the doings of the commissioners, and to consolidate the district which they have divided.

1st. On the ground that the appellants were not notified of the division. 2d. As being detrimental to education; a majority being in favor of having a large school-house, and two teachers employed, one for large and one for small scholars. 3d. That the old district was sufficiently compact.

As to the first objection, it was wrong in the commissioners not to give full notice to both parties. A neglect to do so does not affect the legal formation of the district, as the statute does not in terms require that notice to the parties interested, which it was reasonable to expect commissioners acting impartially between neighbors would always give.

As to the 2d objection—if the scholars in the district are so numerous as to require two teachers, this would be a strong reason in favor of two districts. If the inhabitants of a large district can act in harmony, and establish a high school, or other-

wise elevate the character of the common school, it would undoubtedly be useful to the cause of education; but if this unity of sentiment cannot be produced, they cannot have, under the law, any other than a common school.

By the law it is made the duty of the commissioners to divide their town into a convenient number of districts; they have the best means of judging in this matter from their local knowledge, and unless it appears that they have acted partially, or from some improper motives, great weight must be given to their decisions. In this case, district No. 6, with 36 scholars, might seem to have the greatest reason to complain of the division. If its inhabitants are willing to erect a school-house at their own expense, (which they must do, as the appraisement of the old house, if of any value, can only be made at the time of the division,) and support a school, the inhabitants of No. 8, with 55 scholars, cannot be considered the aggrieved party. The appeal is dismissed.

The Inspectors of Common Schools of the town of Cobleskill, *ex parte*.

Three inspectors must sign a certificate of qualification for a teacher, in order to give it validity.

This was an application from the inspectors of common schools of the town of Cobleskill, for the opinion of the Superintendent as to the validity of a certificate of qualification for a teacher signed by two inspectors, a third, who was present at the examination of the teacher, having declined signing the certificate.

By A. C. FLAGG, *September 15, 1829*. Section 45 of the school act says, "it shall be the duty of the inspectors of common schools, or any three of them, at a meeting called for that purpose," to examine teachers, &c.; and sec. 47 says if the inspectors shall be satisfied they shall give a certificate, &c. Again, sec. 48 says "the inspectors, or any three of them, may annul" such certificate. It is clear from these sections that three inspectors are necessary to grant, and the same number to annul a certificate. The certificate ought to be signed by three inspectors.

The Trustees of school district No. 1 in the town of Ballston, *ex parte*.

Trustees of school districts must render an account of their receipts and expenditures, at the expiration of their office: it is their duty also to give such reasonable explanations as may be required.

This was an application by the trustees of school district No. 1 in the town of Ballston, for the direction of the Superintendent

as to the manner of accounting to the district at the expiration of their office.

By A. C. FLAGG, *October 15, 1829.* The trustees, on the expiration of their office, are to render a just and true account in writing of the receipts and expenditures by them, see sec. 98 of school act. They ought also to give any reasonable explanations to the meeting in relation to their expenditures.

Isaac Sherman, Collector of school district No. 4 in the town of Spencer, against the Trustees of said district.

Collectors are entitled to 5 per cent. on all sums actually collected and paid over by them; but not on sums paid to teachers for tuition.

Trustees are not authorized to receive moneys for taxes, or on rate-bills; but payments may be made to teachers for their wages, and on sums so paid, the collector loses his fees.

This was a case submitted by the parties for the decision of the Superintendent; the trustees of district No. 4 in the town of Spencer having received part of a tax from the persons on whom it had been assessed, and left the remainder to be collected by the collector, who claimed his fees on the amount so received by the trustees.

By A. C. FLAGG, *October 15, 1829.* When a tax is assessed for a school-house, the collector is entitled to 5 per cent. on the whole amount. In making out the tax-list the trustees are required, sec. 75, sub. 4, to annex to it a warrant "for the collection of the sums in such list mentioned, with 5 cents on each dollar thereof, for his (the collector's) fees." On every dollar which is collected and paid over by him, the collector is entitled to his fees, (sec. 104.) If he is so unfortunate as not to collect the entire tax, he loses his fees on the amount not collected. It would be manifestly unfair to allow the trustees to collect from all who pay promptly, and leave to the collector, his 5 per cent. only on the debts due from the others. Besides, who is entitled to the five per cent. if the collector is not? It must be put in the tax-list, and it is to be considered as the fair perquisite of the collector for his trouble and responsibility.

The law is silent as to the payment of taxes to trustees, but authorizes payments to teachers for their wages, sec. 75, sub. 8. When those payments for wages are voluntarily made to the teacher by the patrons of the school, the persons thus paying save the 5 per cent. for collector's fees, as the law recognizes such payments, and authorizes the trustees to make out a warrant against such only as are liable for the residue of the teacher's wages. If any part of the rate-bill is not collected, the collector loses his fees on the amount unpaid; the 104th section limiting his fees to the amount "collected and paid over by him."

The Commissioners of Common Schools of the town of Lawrence *against* the Commissioners of Common Schools of the town of Hopkinton.

If a town is divided, and a new town erected, the latter is entitled to an equitable share of the school moneys apportioned to the former, unless the law shall have otherwise provided in the particular case.

On the 21st day of April, 1828, an act was passed dividing the town of Hopkinton, and erecting the town of Lawrence, by setting off a portion of the former town. In the ensuing spring, the commissioners of common schools of the town of Hopkinton received the whole amount of school moneys apportioned to that town, and, upon the alleged ground that the agent of the petitioners for the new town had stipulated that it should, if erected, relinquish its claim to any portion of those moneys, the commissioners proceeded to distribute the whole amount so received among the districts in the town of Hopkinton, excluding from a participation in the distribution all the districts comprised within the territory set off to form the town of Lawrence. From this proceeding the commissioners of the latter town appealed.

By A. C. FLAGG, *November 25, 1829.* The districts within the town of Lawrence should have been included by the commissioners of Hopkinton in the distribution of the school moneys made by them. Whatever the petitioners for the new town, or their agent, may have stipulated with respect to a relinquishment of their portion of the school moneys, such stipulation has no force whatever, the law erecting the new town being silent on the subject. The inhabitants of the school districts in the territory set off have their equitable rights, which cannot be bartered away by an agent to procure the erection of a new town.

The inhabitants of school district No. — in the town of Southampton *against* the Trustees of said district.

The public money can only be applied to the benefit of such schools as are established by trustees of school districts.

This was an appeal by certain inhabitants of school district No. — in the town of Southampton from the decision of the trustees of said district, in refusing to allow any part of the public moneys to a school set up by said inhabitants without the authority of the trustees. The alleged cause for establishing the school was that the school-house was not sufficiently capacious for the accommodation of all the children residing in the district.

By A. C. FLAGG, *December 14, 1829.* The public money can only be apportioned and paid to such schools as are establish-

ed by the trustees, and are under their direction. If the district school-house is too small, then the inhabitants by a vote must tax themselves to enlarge it, or to hire additional rooms, so as to accommodate all who wish to attend the district school. When this is done, the trustees are bound to furnish tuition for all at the same rate, and to give all an equal share of the school money. But it must be managed by the trustees of the district, and be in effect one school. If a portion of the inhabitants of the district set up an independent school, the statute does not allow them any share of the fund. The control of the trustees over all the schools in the district must be maintained, or all system and subordination would be at an end.

The Trustees of school district No. 19 in the town of Pompey, *ex parte*.

Indigent persons may be exempted from the payment of school bills, whether there is public money to be applied to the term or not.

The trustees of school district No. 19 in the town of Pompey, at the close of a term of instruction, exempted several of the inhabitants of the district, on account of their indigent circumstances, from the payment of the teacher's wages. The public money having been expended, there was none remaining on hand to be applied to the term referred to. Objections having been made to the authority of the trustees to make exemptions in such cases, application was made to the Superintendent for his advice and direction.

By A. C. FLAGG, *December 18, 1829*. You can "exempt from the payment of teachers' wages such indigent persons within the district as you may think proper," and this whether you have public money in your hands to pay or not.

The intention of this provision of the law is, that children whose parents are unable to pay for their schooling shall be furnished with the means of a common school education, and if the persons are proper subjects of exemption, the fact that there is no public money to lighten the exaction upon them, rather increases than lessens the obligation to exempt them. If they could not pay the balance when half could be discharged by the public money, then they certainly could not pay the whole school bill where there is no relief from that source.

Dean W. Tyler, one of the Commissioners of Common Schools of the town of Mount-Morris, against his associates in office.

Appeals must be made by persons aggrieved.

This was an appeal by one of the commissioners of common schools of the town of Mount-Morris from the decision of his associate commissioners, with whom he differed in opinion with respect to a question submitted to them by one of the school districts within their jurisdiction.

By A. C. FLAGG, *December 26, 1829.* It appears by the statement of facts submitted in this case, that the appellant was one of three commissioners of common schools who were called upon to decide a question in regard to the school-house in district No. 6, and that he differed in opinion with the other two commissioners as to the decision made, and that he now appeals from the decision of his colleagues. It does not appear that he is an inhabitant of district No. 6, or that he is affected by the decision made. The appeal must be made by a person aggrieved, before the Superintendent can take cognizance of it, and a mere difference of opinion among the commissioners is not a ground of grievance to any one of them.

(ANONYMOUS.)

A school month is twenty-six days, exclusive of Sundays.
A quarter of a year is ninety-one days.*

By A. C. FLAGG, *January 20, 1830.* The Revised Statutes, (vol. 1, p. 606,) provide, that whenever the term month is used in any contract, it shall mean a calendar and not a lunar month; and that ninety-one days shall be considered a quarter of a year. Twenty six days will, therefore, constitute a school month, being the average number of working days, after deducting Sundays. If the school is dismissed on the afternoon of Saturday, the teacher is not required to make up the time after the expiration of his month; and if he keeps the whole day, he does not gain time thereby, but must continue his school until the month is fully ended.

* See decision of Feb. 11, 1833, by John A. Dix, for the number of days to be taught in a quarter.

The Commissioners of Common Schools of the town of Potsdam, *ex parte*.

Children attending an academy are to be numbered in the reports of the trustees of school districts, if their parents reside in the district in which the academy is situated; but not otherwise.

This was an application to the Superintendent of Common Schools for his direction in the following case. The St. Lawrence academy was included within the limits of one of the school districts in the town of Potsdam, and among the children attending it were several, whose parents resided in the district, and others, whose parents were non-residents of the district, but who were boarded within it for the sole purpose of attending the academy. The question submitted was whether either or both of these classes of children should be enumerated and included by the trustees of the school district in their annual report.

By A. C. FLAGG, *January 22, 1830*. Section 92, sub. 4, makes it the duty of trustees, to include in their annual report, "the number of children residing in the district on the last day of December." Children attending an academy, whose parents reside in the district, are to be included in the district report.—Scholars boarding in the district and attending the academy, whose parents or guardians reside out of the district, are not to be enumerated in the report of the trustees of the district. The residence of the parent is the residence of the child; and boarding the child in another district to get an education, does not change its residence.

The Trustees of school district No. 2 in the town of Concord, *against* A. B. an inhabitant of said district.

A taxable inhabitant of a school district may send to school any child actually living with him.

This was a case submitted for the decision of the Superintendent upon a statement of facts agreed to by the parties. A. B. a taxable inhabitant of school district No. 2 in the town of Concord, had residing with him a boy, whose father resided in another district. The boy was not boarded with A. B. but was treated in all respects as one of his own family, and worked on his farm like his own children. The trustees, deeming the boy a temporary resident of the district, resolved to exclude him from the school; but by agreement, the case was referred to the Superintendent for his decision.

By A. C. FLAGG, *January 27, 1830*. The public money is to be apportioned among the children residing in the district.

A person who pays taxes and is a resident of your district, ought to be allowed to send to school any children actually living with him as members of his family.

The Trustees of school district No. 1 in the town of Milton, *against* John Kelly.

The Superintendent of Common Schools will not take cognizance of controversies in school districts, in respect to which the parties have commenced litigation in the courts.

This was an appeal to the Superintendent for his interposition in a case, in which a suit had been brought, and was then pending, before one of the justices of the peace of the town, in which the controversy arose.

By A. C. FLAGG, *January 27, 1830.* The Superintendent has no control over the proceedings of justices of the peace. If the trustees or inhabitants of a district commence litigation in the courts, in relation to school affairs, they must follow the ordinary channel of the courts, as prescribed for all other cases.

The Trustees of school district No. 8 in the town of Hounsfield, *against* the Commissioners of Common Schools of said town.

If trustees consent verbally to an alteration in their school district, the proceedings will not be set aside for want of a written assent.

In this case, the commissioners of common schools in the town of Hounsfield, divided school district No. 8 in said town and formed a new district. The trustees of school district No. 8 were present, and made no objection to the alteration. An appeal was afterwards presented to the Superintendent upon the sole ground that the commissioners should have procured the written consent of the trustees before making the alteration.

By A. C. FLAGG, *January 30, 1830.* The verbal consent of trustees to an alteration of their school district is sufficient.— If they are present when the commissioners make the alteration and do not object, they must be considered as consenting to it, and the proceedings will not be disturbed.

The Inspectors of common schools of the town of Monroe, *ex parte.*

A teacher should not be questioned by the inspectors as to his religious opinions: but a person who openly derides all religion should not be employed as a teacher.

This was an application to the Superintendent from the inspectors of common schools, of the town of Monroe, for instruc-

tions as to their right to question a teacher with respect to his religious opinions, in order to determine whether his moral character was such as to entitle him to a certificate of qualification.

By A. C. FLAGG, *February 1, 1830*. In relation to the moral character of the teacher, much is left to the discretion of the inspectors. They must be satisfied that it is good, because they have to certify to its correctness. On this point what would be satisfactory to one man might be unsatisfactory to another.— Every person has a right to the enjoyment of his own religious belief without molestation: and the inspectors should content themselves with inquiries as to the moral character of the teacher; leaving him to the same liberal enjoyment of his religious belief that they ask for themselves.

If a person openly derides all religion, he ought not to be a teacher of youth. The employment of such a person would be considered a grievance by a great portion of the inhabitants of all the districts.

The Trustees of school district No. — in the town of Winfield, *ex parte*.

A tax voted to repair a school-house should not be collected, if the district has no title to the site, and the owner has forbidden the repairs to be made.

This was an application for the direction of the Superintendent in a case in which a school-house had been erected, by the sufferance of the owner, on land to which the district had no title: the land, after passing through the hands of a number of persons, came into possession of a purchaser, who was desirous of appropriating the site of the school-house to his own use. The house having become dilapidated, the owner of the land forbade any repairs to be made on it so as to render it habitable for common school purposes. A tax had been previously voted, and the question submitted was whether it should be collected and expended as had been intended.

By A. C. FLAGG, *February 16, 1830*. It appears that your district built a school-house by consent of the owner on land for which no title was obtained; that this land has passed into other hands, and that the present owner forbids the district the use and occupancy of the house, or at least forbids their repairing it for use. There is no redress in this case. The district is in the situation of a person who builds his house on land which does not belong to him.

The tax voted to repair the house should not be collected, as it cannot be safely expended for the purpose.

The Trustees of school district No. — in the town of Winfield, *ex parte*.

A school-house may be kept in repair by tax, if the district has a lease of the land on which it stands.

This was an application for the opinion of the Superintendent with regard to the propriety of expending money for repairing a school-house, in a case where the district had obtained from the owner of the land, on which it stood, a lease of the site for so long a time as the house should be used for common school purposes.

By A. C. FLAGG, *March 6, 1830*. Where the district has a lease from the owner of the land on which the school-house stands, to use it as long as the district may require it for a school-house, a tax to repair it is legal and proper. It is in all cases desirable that the fee of the land should be vested in the trustees, but this does not affect the question of collecting the tax, for this may be done even to pay the rent of a school room.

The Trustees of school district No. 3 in the town of Redhook, *ex parte*.

If a teacher cannot procure a certificate of qualification from the inspectors, his wages may be collected of those who send children to school, and fuel may be provided by tax, if a tax is voted for the purpose.

This was an application for the direction of the Superintendent in a case, in which the inspectors, after examining the teacher, had refused to give him a certificate of qualification. In consequence of such refusal, some of the inhabitants of the district denied the right of the trustees to collect his wages, and the right of the district to vote a tax to provide the school with fuel.

By A. C. FLAGG, *March 17, 1830*. Whether the teacher has a certificate or not, there can be no doubt of the right to collect a tax for fuel, when voted by the district. The trustees cannot pay the public money to a teacher who is not legally qualified, but they can collect his wages of those who send to school, by warrant, and the fuel can be provided by a tax upon property, if voted to be so furnished by the district.

(ANONYMOUS.)

Land occupied by a minister of the gospel, as tenant, cannot be taxed unless its value exceeds \$1,500.

By A. C. FLAGG, *April 10, 1830*. By the Revised Statutes relative to the assessment and collection of taxes, a minister of the gospel is entitled to exemption from all taxes for real estate to the amount of \$1,500, "when occupied by him." The mi-

nister being a tenant on Mr. Remer's land, it could not be assessed to Mr. R., and therefore is exempt under the statute for the assessment and collection of taxes.

(ANONYMOUS.)

If a district directs the public moneys to be divided, the vote should be passed during the year in which the moneys are to be applied.

By A. C. FLAGG, *April 19, 1830.* It is made the duty of the trustees, by sec. 75, sub. 9, to divide the public moneys into not exceeding four parts, "whenever authorized by a vote of their district," and to apply one portion to each term, during which a school shall be kept. The vote as to the manner of applying the money, should be passed during the year in which it is to be expended. The trustees are annually elected, and this vote must be considered as an instruction to each set of trustees by the district meeting. If no vote is passed, then the manner of applying the public money is left to the discretion of the trustees.

The Trustees of school district No. — in the town of Colesville, *ex parte.*

Trustees have the exclusive right of employing teachers.

At the annual meeting in school district No. — in the town of Colesville, a vote was passed directing the trustees to employ a female teacher. The trustees disregarded the direction, and engaged a male teacher; and the opinion of the Superintendent was solicited as to the propriety of the proceeding.

By A. C. FLAGG, *April 26, 1830.* The trustees are empowered by the statute to employ all teachers for the district. They should employ qualified teachers; for to such only can they pay any part of the public money. If in doing this, they can conform to the wishes of the district, they ought to do so; but if the district votes to employ an incompetent teacher, the trustees should not regard the vote. The inhabitants of the district designate the persons who shall be trustees; and the persons thus designated are invested by the law with certain powers, for the faithful and conscientious discharge of which they alone are responsible, and with which the district cannot properly interfere.

The Commissioners of Common Schools of the town of Farmington *against* the trustees and inhabitants of school district No. 11 in said town.

The vote of a district meeting declaring the district dissolved has no binding force.

This was an application to the Superintendent for his decision on a statement of facts agreed to by the parties, in which the right of a district to interfere with its own organization by a vote of the inhabitants was asserted on the one hand and denied on the other.

By A. C. FLAGG, *April 27, 1830.* The proceedings of a district meeting, declaring the district dissolved, has no binding force whatever. The commissioners can alter, modify, and even annul a district; but in doing this, they must attach the inhabitants thereof to some other district. A district meeting has no power over this matter.

The Trustees of school district No. 5 in the town of Jamestown, *ex parte.*

If a warrant to collect a tax is made out under the seal of the trustees, as required by law, the renewal may be without a seal.

District No. 5 in the town of Jamestown having been duly formed, a tax was voted to build a school-house, the tax-list was made out, and a warrant, under the hands and seals of the trustees, was duly issued and delivered to the collector. A few individuals having neglected to pay their proportion of the tax, the trustees renewed the warrant as to the delinquents, but did not affix their seal to the renewal. The warrant was delivered to the collector, who levied on the property of the delinquents and sold it. The question submitted was, whether the renewal of the warrant was valid.

By A. C. FLAGG, *June 2, 1830.* A warrant was made out under seal, and in relation to certain delinquents was renewed by the trustees: The delinquents contested the validity of the renewal, because it was not also under seal. It is conceded that the warrant is valid in all respects; and it would seem that those who have been favored with an extension of the time for paying their tax beyond the ordinary life of the warrant, are the last persons who ought to call in question the form in which this indulgence to them is granted. The original warrant is just as good evidence of the indebtedness of the person, and the equity of the assessment, after thirty days, as before. The warrant requires the collector to levy and make return within thirty days, and the renewal is, in its operation, merely giving the collector

thirty days longer to make his return in respect to certain delinquents, and gives such delinquents thirty days longer to make payment. The renewal does not recapitulate any part of the warrant, but is made upon the supposition that the warrant is perfect. If it is not to be viewed in this light, it would seem that the renewal should state the material parts of the warrant, as well as to have the seal affixed. The proceeding on district warrants is the same as on justices' executions, and in the case of executions, 2d R. S. p. 251, sec. 145, it is provided that "if any execution be not satisfied, it may from time to time be renewed by the justice issuing the same, by an endorsement thereon to that effect, signed by him and dated when the same shall have been made." A similar endorsement embracing the names of the delinquents, is a valid and sufficient renewal of a warrant issued by the trustees of a school district. Trustees cannot issue or renew a warrant after their successors are chosen. The new trustees, on being satisfied by their predecessors that certain sums are due, should sign or renew a warrant in order to give it effect, but in doing this they do not incur any individual liability.

(ANONYMOUS.)

Public money cannot be paid to a district unless a school has been kept therein three months by a qualified teacher, and unless all moneys received the previous year have been paid to him.

By A. C. FLAGG, *July* 16, 1830. The commissioners of common schools are expressly prohibited from paying the public money to any district, unless there is a report showing that the district has had a duly qualified teacher for three months at least, and that all moneys received from the commissioners for that year have been applied to the payment of the compensation of such teacher, sec. 24.

The leading design of the school system is to promote the employment of qualified teachers.

The Trustees of school district No. 13 in the town of Castile, *ex parte*.

A person set off without his consent from a school district, cannot be taxed for a school-house, if within four years he has paid a tax for that purpose in the district from which he was thus set off.

If a part of the value of the property of an old district is awarded to a new district on account of a person not liable to be taxed in the latter for a school-house, the amount is to be allowed to the credit of all the inhabitants.

This was a case in which a new district was formed, and a part of the value of the school-house belonging to the district from which it was taken, was apportioned to the former on ac-

count of the taxable property of a person who had paid a tax in the old district within four years, and who was set off to the new district without his consent. The questions submitted were, whether he could be taxed in the new district for a school-house, and if not, to whose credit the sum received from the old district on account of his taxable property, should be applied.

By A. C. FLAGG, *July 26, 1830.* The 81st section exempts "every taxable inhabitant of a district who has been within four years set off from any other district," without his consent, if he has paid a tax within that time for building a school-house. It is not material whether he is set off from an old to a new district, or whether from one old district to another. The person to whom you allude, if he has paid a tax within four years for building a school-house, and if he did not consent to be set off, is entitled to exemption.

The money which is apportioned on the property of this person from the old district is to be paid to the trustees of the new district, and by them applied towards procuring a school-house for their district. This, if it is equal to the new tax, is an exemption of all those set off, whether they consented or not; for it is to be allowed to the credit of the inhabitants thus set off in payment of any tax assessed on them. But an apportionment made to one individual is not to be credited to another in extinguishment of his tax, but is to be paid towards the erection of the new house, as an offset for the exemption which the non-consenting individual claims. The fair, equitable import of sec. 69 is, that the money apportioned to each individual and paid by the old district, shall be credited to that individual. This is the only "credit" to which he is entitled. My opinion therefore is that the individual, on the facts assumed, is exempt, and that the money apportioned to him from the old district is to be applied for the benefit of the new district, as an offset for such exemption.

The Commissioners of Common Schools of the town of Hamilton, *ex parte.*

Persons attached to a school district without the consent of the trustees, may within three months be set off again without the consent of such trustees.

This was a case in which the commissioners of common schools of the town of Hamilton set off three persons from one existing district to another, without the consent of the trustees of the district to which they were thus annexed. Before the expiration of three months, the commissioners formed a new district, and annexed to it the three persons referred to. The question submitted was, whether the consent of the trustees of the

district to which they were first set off was necessary, or whether the consent of the trustees of the district from which they were originally taken, was sufficient.

By A. C. FLAGG, *August 6, 1830.* If persons are attached to a district without the consent of the trustees, and the commissioners, before the end of three months, set them to a new district, they only want the consent of the trustees of the district to which they originally belonged. The new district has no trustees to consent for it; and the persons are not yet legally incorporated with the district to which they were first transferred.

The executors of the estate of Thomas Smith *against* the trustees of school district No. 21 in the town of Brookhaven.

Persons about to remove from a district must be included in a tax-list, if they are actually inhabitants of the district when the list is made out. No appraisement of a school-house and other property is necessary when persons are set off from one existing district to another.

This was an appeal by the executors of the estate of Thomas Smith deceased, late a taxable inhabitant of school district No. 21 in the town of Brookhaven, from the proceedings of the trustees of said district, in assessing a tax for building a school-house. The circumstances under which the appeal was brought, are stated in the decision of the Superintendent.

By A. C. FLAGG, *August 9, 1830.* In the case of the appeal of Charlotte S. Smith, executrix, Wm. Woodhull and Wm. Beale, executors of the estate of Thomas Smith, deceased, from the doings of the trustees of district No. 21 in Brookhaven, it appears that Thomas Smith in his life time was transferred from district No. 20 to 21, and that at the time of the transfer all the trustees of the two districts gave their consent. District No. 21 having no school-house, a room was hired for the accommodation of the district school. In September, 1829, Thomas Smith, of whom the house was hired, died, and the trustees had notice that they could not occupy the house after May following. Accordingly in February the district voted a tax to build a school-house. In pursuance of this vote, a tax-list was made out and placed in the hands of the collector, property belonging to the estate of Thomas Smith deceased, was seized and advertised by the collector, and two days before the sale notice of an appeal to the Superintendent was served, and the sale has been thus suspended.

1. The appellants allege that the family of Thomas Smith, deceased, were about removing from the district when the assessment was made, and complain as a hardship that the estate should be required to pay for privileges which none of the family can enjoy.

2. That it was the duty of the trustees to have obtained from the commissioners an appraisal of the school-house in No. 20, and to have deducted the apportionment belonging to the Smith estate before the tax list was made out.

In relation to the first point, it is to be observed that sec. 76, says that the trustees shall apportion the tax among 'all the taxable inhabitants of the district "at the time of making out the list." If those who are liable to pay taxes on the estate of Thomas Smith deceased, were residents of district No. 21 at the time of making out the assessment, then it was imperative on the trustees to place them upon the list. As to the hardship of paying for a school-house from which the family, in consequence of their removal, will derive no advantage, it is similar in character to the apparent hardship to which all those persons are subjected who are assessed to erect school-houses when they have no children to send to school, and consequently receive no direct equivalent for their money. The law however for supporting common schools is based upon the principle that all property shall be assessed for the support of schools, whether the owner has children requiring school accommodations or not. And if the persons thus situated receive no direct equivalent for their money, they are nevertheless interested in and benefitted by every measure which tends to ameliorate the condition and enlighten the minds of those around them. Property is valueless unless the owner is protected in the quiet enjoyment of it, and it is better to pay a tax to give instruction to the rising generation, and thus train them to usefulness, than to pay a tax to punish them for crimes from which an education might have protected them. Persons of property have the greatest interest in whatever concerns the peace and welfare of the community; and they have an interest in supporting the common schools proportioned to their property. If the child of their neighbor becomes intelligent and grows up a useful citizen, he is a safeguard to them, and secures them in the quiet possession of their property. If he grows up in ignorance and vice, and becomes a depredator upon society, the man of property is exposed in proportion to the extent of his possessions, and in addition to this his property is taxed for the punishment of the depredator. County and town taxes are paid with a less gratifying equivalent than that received for taxes paid for schools.

The trustees in this case could not legally exempt the estate of Mr. Smith from assessment.

As to the second point, it is only necessary to say, that as the commissioners set the persons in question from one district to another district, no appraisalment of the school-house was necessary. Sec. 67 provides that the school-house of the old district shall be estimated "when a new district shall be formed from one or more districts possessed of a school-house." In this case no new district was formed; it was only an alteration of the line between two old districts.*

The appeal is dismissed.

The Trustees of school district No. 4 in the town of Mount Morris, *against* the inhabitants of said district.

A tax being voted to build a school-house, the tax list made out and a warrant issued, the collection of the tax can not be suspended by vote of a district meeting.

The facts of this case are stated in the Superintendent's decision.

By A. C. FLAGG, *August* 12, 1830. In the case of the appeal of the trustees against the inhabitants of district No. 4 Mount Morris, it appears that in the month of March last, the district passed a vote to raise 175 dollars to erect a school-house, fixed a site, and instructed the trustees to erect the building. Accordingly a contract was made and the house is now in progress. On the 5th of June, at a district meeting, a vote was passed suspending the collection of the tax, or a part of it, until after the expiration of the term of service of the present trustees. This is improper: the trustees have made contracts on the faith of the vote to raise a tax. The assessment is made out and the warrant issued. The power given to district meetings, by sec. 61, sub. 6, to alter and modify their own proceedings, does not confer authority to interfere with a warrant which has been issued by the trustees.

It is decided that the proceedings of the meeting of the 5th of June, 1830, in district No. 4 Mount Morris, are void.

* This principle is settled by the decision in the case of the trustees of school district No. 17, in the town of Hector, page 85.

(ANONYMOUS.)

Vacant unimproved lots are not taxable, if the owner is a non-resident. Of a lot of 50 acres, a tenant of ten is regarded as the agent of the non-resident owner for the remaining forty.

By A. C. FLAGG, *October 11, 1830.* Vacant unimproved lots, if the owner is a non-resident of the district, are not taxable for school purposes. Where a lot of fifty acres, had a tenant on ten acres of it, it was decided that the tenant could be assessed for ten acres; and that he must be so far regarded as the agent for the forty acres, as to make the non-resident owner taxable therefor, under sec. 77.

(ANONYMOUS.)

Purchases subsequent to the organization of a school district are not to affect their boundaries.

By A. C. FLAGG, *October 13, 1830.* Where a person purchased a lot in an adjoining district along side of his farm, it was decided that he was taxable for the lot purchased, in the district where it was situated. If his farm had been intersected by the district line, when the commissioners formed it, then he would have been assessed for his whole farm, in the district where his house was situated; but the lot purchased is a distinct lot, and the lines of districts cannot be changed by individual purchases.

The Trustees of school district No. 12 in the town of Sardinia, *against* the Commissioners of Common Schools of said town.

Commissioners of common schools cannot interfere with the organization of a school district, while an appeal before the Superintendent, in respect to such organization, is pending.

On the 16th September, 1829, the commissioners of common schools of the town of Sardinia, formed school district No. 12 in said town, by setting off a part of No. 1. From this proceeding an appeal was brought to the Superintendent, who, on the 22d May, 1830, annexed to district No. 12 a part of district No. 2, and in other respects confirmed the proceedings of the commissioners. While this appeal was pending, the commissioners formed a new district and set off to it the persons previously annexed to No. 12. From this proceeding another appeal was brought by the trustees of No. 12.

By A. C. FLAGG, *November 25, 1830.* The decision of the 22d May establishes the boundaries of district No. 12. The commissioners were wrong in interfering with this question during

the pendency of the appeal. The whole design of the law which authorizes the appeal, was that the authority in relation to the points in controversy, should be taken from the commissioners, and transferred to the superintendent from the time of making the appeal. The appeal would be a mockery, if, in the mean time, the commissioners could go on and make anew all the alterations which were appealed from as a grievance. But if the commissioners had not erred in their interference with a question which had been taken from them by an appeal, still the decision of the 22d of May settles the boundaries of No. 12, and that decision, as to the particular question submitted, is final, and the commissioners cannot alter those boundaries at a subsequent time.

[(ANONYMOUS.)]

If an annual meeting is held at the time and place appointed at the annual meeting of the preceding year, it is valid, although the clerk of the district may have neglected to give the notice required by law.

By A. C. FLAGG, *October 30, 1830.* At an annual meeting the time and place for the next annual meeting are to be fixed; this is notice to all the district, and if the inhabitants meet according to the adjournment, the meeting is valid, although the clerk may have neglected to put up the notice required by the statute.

The Trustees of school district No. — in the town of Lysander, *ex parte.*

The public money must be paid to teachers for services rendered between the January preceding and the January following the time of receiving it.

This was an application to the Superintendent for his opinion with regard to the right of the trustees of a school district to pay the public money received in April to a qualified teacher for giving instruction during the summer of the previous year.

By A. C. FLAGG, *November 10, 1830.* The school money received in April, should be paid for the wages of qualified teachers between the January preceding the time of its receipt, and the January following. This enables the trustees to certify in their annual report, dated in the following January, that the money has been paid to a qualified teacher, "during the year ending at the date of such report," as required by the 24th section of the school statute.

The Trustees of school district No. — in the town of Stillwater, *ex parte*.

A store and lot must be taxed in the district in which they are situated; but goods in a store are to be taxed in the district in which the owner resides.

This was an application for the opinion of the Superintendent in a case where the owner of a store was assessed to pay a tax on the goods contained in it, in a district adjoining the one in which the store was situated, the residence of the owner being in said adjoining district. The store and the owner's dwelling house were separated by a road, which was the boundary line between the two districts. The principle of the Superintendent's opinion in the case is, that the store and lot, being real estate, were taxable in the district where they were situated, and the goods contained in the store, being personal property, were taxable in the district in which the owner resided.

By A. C. FLAGG, November 19, 1830. The owner of the store who is a non-resident is liable to be assessed in your district for the building and store lot; for the goods in the store he is liable to be taxed in the district where he resides, and not elsewhere.

The Trustees of school district No. 2 in the town of North Salem, *ex parte*.

A person coming into a school district the day before a district meeting, with the *bona fide* intention of residing there, is a voter.

This is a case in which the Superintendent's opinion was solicited with respect to the right of a person to vote at a district meeting, who had removed into the district with his family and taken up his residence in it the day before the meeting was held.

By A. C. FLAGG, November 19, 1830. Persons who have recently moved into the district, if they have done it with a *bona fide* intention of taking up their residence therein, and who have the other legal qualifications, are entitled to vote at district meetings. A person who has purchased a farm, or rented a tenement, and has come into the district to reside the day before a district meeting, has the required residence to entitle him to vote.

The Trustees of school district No 7 in the town of Salem, *ex parte*.

Persons having certain qualifications may vote at district meetings.

This was an application to the Superintendent, from the trustees of district No. 7 in the town of Salem, to decide what qua-

fications were necessary to entitle a person to vote at a district meeting, a tax having been laid in the district to build a school-house, and a question having arisen as to the right of certain inhabitants to give their votes.

By A. C. FLAGG, *December 7, 1830.* The qualifications for voting at district meetings, are:

1. Having a freehold in the town.
2. Having been assessed to pay taxes in the town.
3. Having fifty dollars liable to taxation. Either qualification is sufficient without the other.

The payment of taxes on the highway, qualifies a person to vote in a district meeting under section 60. The old constitution, section 7, required as one qualification for voting, that the citizen should have "been rated and actually paid taxes to this state;" and the 10th section of the election law, 2 R. L. of 1813, p. 253, declared that payment of taxes on the highways should be considered as a "payment of taxes to the state," for the purpose contemplated in the constitution. By section 60 of the school statute, the person entitled to vote is only required to have paid taxes, or to have been assessed, in the town where he resides, to entitle him to vote in the district.

Personal property to the amount of fifty dollars over and above the exemptions on execution, if the fifty dollars is liable to taxation in the district, makes the owner, if he is a resident of the district, a voter therein.

The Trustees of school district No. 3 in the town of Eaton, *ex parte.*

In employing teachers trustees should so far consult the feelings and wishes of the inhabitants as not to give offence to a large portion of them.

This was a case in which the inhabitants of school district No. 3 in the town of Eaton, had, at a district meeting, voted that a certain person should be employed as a teacher by the trustees. The trustees, in opposition to the direction contained in the vote referred to, employed another individual. In consequence of thus violating the wishes of the inhabitants great excitement was produced in the district, and the opinion of the Superintendent was solicited with regard to the legality of the proceedings of the trustees.

By A. C. FLAGG, *December 16, 1830.* I have received the application of twenty-five of the inhabitants of district No. 3 in the town of Eaton, in regard to the employment of a teacher by two of the trustees, contrary to a vote of said district for another person.

Two of the trustees have a legal right to employ a teacher ;

they ought, however, so far to consult the wishes and feelings of the district, as not to employ a person who is offensive to a large portion of the inhabitants. In this case the trustees appear to have a majority of the district with them; they also have the law on their side. With all this, however, I would urge upon them the importance of conciliation and of preserving harmony in the district.

If the opposing party have valid objections to the teacher employed, that would be another matter, and they could urge those objections on an appeal to the Superintendent.

The Trustees of school district No. 2 in the town of Depau, *ex parte*.

A minister of the gospel is exempt from taxation for common school purposes in the same manner as for other taxes.

This was an application to the Superintendent for his opinion with regard to the right of the trustees of school district No. 2 in the town of Depau, to include in the assessment of a tax voted to build a school-house, a minister of the gospel residing in the district.

By A. C. FLAGG, *December 30, 1830*. A minister of the gospel is exempt from a tax for school-houses in the same manner as for other taxes, by the 4th section of the general tax law: If the minister is to be included in the district assessment roll, then by the same rule all the property exempted in said 4th section should also be embraced; for there is no special exemption in the school statute, of colleges, poor-houses, churches, and United States and state lands: And if full effect were not given to the exemptions in the general law, the school-house would also be embraced in the tax-list of the district.

The inhabitants of school district No. 13 in the town of Knox, *against* the Trustees of said district.

No real estate except such as lies in a school district can be taxed in it for common school purposes.

Non-resident tenants cannot be taxed under section 78 of the title relating to common schools. (But see note.)

This was an appeal by certain inhabitants of school district No. 13 in the town of Knox, from the proceedings of the trustees of said district in assessing a tax. The grounds of objection are set forth in the Superintendent's opinion.

By A. C. FLAGG, *February 25, 1831*. In district No. 13 in Knox, it is represented that the trustees omitted to include in the assessment one separate lot which is not within the district, on the ground that said lot was included in the same

deed with the one on which the owner resides. By the same rule, if a man inherited by will one lot in Cayuga county and another in Columbia, he must be taxed for them both in the county where he resided, because he derived title to both of them in the same will. The lots referred to in the case in district 13, will be taxed in the same manner as if the title to them had been contained in separate deeds.

Another lot was embraced in the same assessment, which was in the occupancy of a tenant who was a non-resident of the district, except the house and garden, which had been sub-rented to a person residing in the district. The 78th section, making non-resident owners liable for taxes, does not extend to non-resident tenants. In this case the tenant of the house who resides in the district can be assessed for the value of the part occupied by him; but that part cleared and cultivated by the original and non-resident tenant is not liable to be assessed to the latter.*

The trustees must correct the assessment accordingly.

The Trustees of school district No. 1 in the town of Oswego, *ex parte*.

Bridge companies are taxable in the school districts where the tolls are collected.

This was an application for the opinion of the Superintendent with regard to the liability of the Oswego Bridge Company to be taxed for common school purposes.

By A. C. FLAGG, *March 12, 1831*. The question is submitted whether the Oswego Bridge Company (a corporation with the usual powers) is liable to be assessed for school taxes. It is provided by title 4, chap. 13, that "all moneyed or stock corporations shall be liable to taxation on their capital;" and sec. 79, of the statute relating to school assessments, says, "the valuation of taxable property shall be ascertained as far as possible

* In the case of Dubois vs. Thorne and others, 8 Wendell, 518, it would seem that a non-resident tenant was considered liable for a tax, the owner of the land being also a non-resident. The decision of the court was made under the school act of 1819, the Revised Statutes not being in force when the tax was laid. The 78th section of the statute relating to common schools, under which the Superintendent's decision above reported was pronounced, was new, and, as the revisers state in their notes, was taken substantially from a bill reported to the assembly in the year 1826. Although the provisions of law, according to which these two cases were determined, were essentially different, the supreme court having, though incidentally, given the opinion that the tenant, who was a non-resident, was liable for the tax on so much of the land as he occupied, and that he, "for the time being, was owner," it would seem that a non-resident tenant might, under section 78, be taxed as owner, for the time, for cleared and cultivated land in the same manner as if the fee were in him.

from the last assessment roll of the town." If the Bridge Company is on the assessment roll of the town, and the tolls are collected in your district, then the company is liable to be taxed in the district in the same manner as in the town. Under the former laws, and when the amount assessed upon corporations was distributed to the several towns where the stockholders resided, it was decided that the school tax must be assessed upon the individual stockholders according to their interest, and not upon the corporation. The laws for assessments upon corporations have been essentially varied, and as they now stand, all Banks and other moneyed or stock corporations, deriving an income or profit from their capital or otherwise, are liable to taxation on their capital, in all assessments for school district purposes.

The Commissioners of Common Schools of the town of Olive, *ex parte*.

Alterations ought not to be made in school districts when the effect is to give particular individuals unjust advantages in respect to others.

This was an application to the Superintendent for his opinion on the following statement of facts: A. B. and C. were annexed to school district No. 8 in the town of Olive, after a school-house had been built and paid for in that district. Sometime afterwards the commissioners of common schools formed a new district, and annexed to it A. B. and C. by setting them off from No. 8. The individuals thus set off, claimed that they were entitled to a portion of the value of the school-house of No. 8, although they had contributed nothing towards its construction.

By A. C. FLAGG, *March 14, 1831*. The case stated in your letter, where certain persons were annexed to a district which had a school-house previously constructed and who being detached again, claim to receive a portion of the value of a house which they did not help to build, is one in which a strict compliance with secs. 67 and 68 would operate inequitably upon those who only retain the house which they themselves built.—In such a case, those who are set off ought not to ask remuneration; and if this is not satisfactory, it would be less unjust to them to be set back to No. 8, than it would be to the inhabitants of the latter to be taxed to pay to those who had contributed nothing to the erection of the house, a portion of its value.

This is a case in which the commissioners should have declined setting the persons off if they required the appraisement of the school-house.

(ANONYMOUS.)

Aliens may vote at district meetings.

By A. C. FLAGG, *March 15, 1831.* Aliens may vote at district meetings. The general law for regulating elections, provides that, "every male citizen" having a certain residence, may vote. The statute relating to schools, says, "No person" shall vote at district meetings unless he has certain qualifications. Subdivision 2, of sec. 74, requires the district clerk in calling a special meeting, to notify "each inhabitant of such district, liable to pay taxes." All persons or inhabitants, who pay taxes, are therefore entitled to vote. The school statute does not require citizenship as a qualification for voting; and an alien, who is a resident of the district, and has the other qualifications, is entitled to vote.

The Trustees of school district No. 4 in the town of Lenox, *ex parte.*

Trustees should see, when they employ a teacher, that he has a certificate of qualification.

If a teacher does not pass an examination before the inspectors, his wages must be collected by a warrant against those who have sent their children to school.

Certificates of qualification are good for a year, even though given by the inspectors for a shorter period.

This was an application to the Superintendent by the trustees of school district No. 4 in the town of Lenox, for the purpose of being advised as to the proper course to be pursued to pay the wages of a teacher who had been engaged in teaching three months, and on application to the inspectors, and after an examination by them, had been refused a certificate of qualification for a year; but received one from the inspectors limited in duration, by its terms, to one month. The principal question submitted was whether, on the certificate received by the teacher, the public money might be paid to him for the three months preceding the time when it was given.

By A. C. FLAGG, *April 16, 1831.* The trustees of a district can issue a warrant for the school bills of a teacher who has no certificate as well as for one who has. In applying the public money however, they can only pay it to those who are duly qualified. (See sec. 24.)

When the trustees employ a teacher to whom they intend to pay the public money, they ought to know that he has a certificate dated within one year of the time of his employment. The certificate of the inspectors, if it is good for a month is good for a year. There can be no half way certificates; it is either good or

bad for the whole time. I have always decided in cases where a conditional certificate was given, that so far as the trustees and the district were concerned the certificate must be considered good. But in your case the teacher did not apply for a certificate until the end of three months, and then failing to pass a satisfactory examination, he could not be considered a qualified teacher for the preceding three months.

You can collect, by warrant, the whole amount of this teacher's wages from those who sent to school, but no part of the public money can be paid to him.

(ANONYMOUS.)

Unless fuel is provided by tax it must be furnished by those who send children to school.

If any person neglects to furnish his proportion of fuel, the amount may be included in the rate bill or sued for.

By A. C. FLAGG, *April 22, 1831.* Where a district meeting votes to provide fuel by a tax, according to sec. 61, sub. 5, the tax must be assessed upon all the inhabitants of the district according to the property owned and possessed by them respectively, whether they send to school or not. Where a district does not vote to provide fuel by a tax, each person sending to school can be required by the trustees, to furnish fuel in proportion to the number of children sent. If any person neglects to furnish his proportion of fuel, the trustees may furnish it, and annex the amount paid for it to the school bill of the delinquent at the close of the school term, or they may prosecute him for it in their name of office. To enable the trustees to make an apportionment of fuel at the commencement of the school, they can ascertain how many scholars each inhabitant proposes to send, and graduate the fuel accordingly. If, in the progress of the school, the number is varied, the apportionment can be altered so as to do justice to the parties concerned.

(ANONYMOUS.)

A tax can not be laid on the property of a district to pay school bills.

By A. C. FLAGG, *May 7, 1831.* The district has no power to vote a tax to pay a school bill. The school bill must be paid by those who send to school. If they are in the district the bill can be collected by warrant: if they live out of the district, by sec. 89, the trustees can prosecute them, in their name of office.

If the warrant to collect a bill has run out, and new trustees are chosen, the new trustees must sign the renewal.

The Commissioners of Common Schools of the town of Nunda, *ex parte*.

In apportioning the value of a school-house belonging to a district lying partly in two towns, the commissioners should follow the assessment rolls of the towns.

This was an application for the direction of the Superintendent in a case where a school district had been formed by setting off from a district lying partly in two towns a portion of its territory and inhabitants. On examining the assessment rolls of the two towns for the purpose of apportioning the value of the school-house belonging to the old district among the persons set off to the new one, the commissioners found the standard of valuation in one town much higher than in the other, and the question submitted was, whether they had a right to equalize the apportionment by disregarding the assessment rolls of the two towns, and adopting a standard of valuation which should be uniform as to both.

By A. C. FLAGG, June 4, 1831. If a new district was formed from Nunda and an adjoining town, it was proper to appraise the school-house retained by the old district.

In apportioning the value of the school-house, it is to be, by sec. 68, "according to the taxable property," to be ascertained from "the best evidence in the power of the commissioners." The assessment roll is ordinarily the best evidence which the commissioners can have. I think that the commissioners should follow the assessment rolls of the towns; and if any persons are aggrieved, they can appeal to the Superintendent for an equalization of the apportionment.

The Trustees of school district No. 1 in the town of Conewango, *ex parte*.

The jurisdiction of the trustees and collector of a school district, in collecting rate bills by warrant, is limited to the district.

Rate-bills must be collected of residents by warrant, and of non-residents by prosecution.

This was a case in which two non-residents had sent children into school district No. 1 in the town of Conewango to attend school, and who, in consequence of a difficulty in respect to the application of the public money, had refused to pay their school bills. The question presented to the Superintendent was whether a warrant could be issued to the collector by the trustees for the collection of the amount due from the non-residents referred to, on account of their portion of the teacher's wages.

By A. C. FLAGG, June 21, 1831. I am inclined to the opinion that the remedy given in the 89th sec. intended to limit the

jurisdiction of the trustees and collector, in collecting a rate-bill, to the boundaries of the district.

Non-residents of the district who have lands therein, may be subject to the operation of the warrant of the trustees, where they come under the 77th or 78th sec., being specially made taxable inhabitants by those sections.

The provisions in subdivision 13 of sec. 75 authorizes the trustees to make a rate-bill against every person who is liable for teachers' wages. This would seem to give color of jurisdiction; but yet I am inclined to believe that it is restricted by section 89. The provision in section 88 authorizing the collector to proceed as on executions issued by a justice of the peace, applies only to the manner of executing the process, but does not extend its jurisdiction.

A rate-bill against residents of the district must be collected by warrant issued by the trustees, and against non-residents of the district by a prosecution on the part of the trustees, in their name of office, and not otherwise in either case."^a

The Trustees of school district No. 13 in the town of Edmeston, against the Commissioners of Common Schools of said town.

If the record of an alteration in a school district does not show that the consent of the trustees was obtained, the fact may be proved by other testimony, and the omission does not invalidate the proceedings.

Where the proper records have not been made, the legal existence of school districts will be presumed, if they have been organized for a length of time.

This was a case in which the commissioners of common schools of the town of Edmeston in the year 1830 set off from school district No. 9 to No. 13 several inhabitants, but neglected to set forth in the record, agreeably to the form prescribed by the Superintendent of Common Schools, that the consent of the trustees of No. 9 had been obtained. In the year 1831, the successors of the commissioners who made the alteration, refused to apportion to district No. 13 any part of the public money on account of the children of the persons set off to it from No. 9, upon the ground that the proceeding was void, as the record did

^a By various enactments, warrants for the collection of all taxes for school district purposes, as well as rate bills for teachers' wages, must direct the collector to proceed in the same manner as on warrants issued by boards of supervisors to the collectors of towns. The principle of this decision is, therefore, essentially varied, excepting in a few cases. The decision by John A. Dix, bearing date the 6th March, 1837, in a case presented from the town of Willsborough, contains a full examination of the law applicable to cases of this description, and in relation to the limits within which school district officers charged with the collection of taxes, may exercise jurisdiction.

not show the consent of the trustees of the latter district to the alteration. From this decision of the commissioners the trustees of No. 13 appealed.

By A. C. FLAGG, *June 25, 1831.* On the appeal of Sampson Chase and David Nichols, jun., trustees of district No. 13, Edmeston, from the decision of the commissioners of said town, in not apportioning to said district the public money for that portion of the annual report which embraced the children set from No. 9 in 1830, it appears by a statement received from the commissioners that they did not consider the proceedings of their predecessors legal in breaking up district No. 9 in 1830, and setting the inhabitants to No. 3 and 13, for the reason that the trustees of the latter districts, as appears from the record, had no notice of such alteration, and of the additions made to their respective districts. The notice they admit was duly served on the trustees of the district which was broken up.

The commissioners who were in office in the year 1830, have testified that when they made the alteration, notice was duly served on the trustees of No. 9, and that no other notice was given to the trustees of No. 13 than to read over the proceedings in regard to the alteration in the hearing of the said trustees of No. 13, who were present when the commissioners dissolved No. 9.

It seems that the trustees of No. 13 were present and consented to the alteration of their district, and that due notice was given to No. 9, and therefore the alteration, so far as 13 was concerned, was complete, except that it could not go into effect for three months, the consent of the trustees of No. 9 being withheld.

In the new forms, the consent of the trustees is inserted as a part of the record, in order to furnish evidence that it was obtained. It was put in the form to prevent the very trouble which has occurred in this case, of getting affidavits to prove that the district was legally formed. But when the evidence which the record should contain, is furnished from satisfactory sources, its omission in the form of the record, does not invalidate the acts of the commissioners. The district was duly altered, as the testimony now produced shows, but the commissioners neglected to state the fact according to the form.

In some instances districts which have been in existence for ten years have been found to be without any record whatever; but the legality of their existence has been considered established by the concurring testimony of the commissioners, and the fact that the district had been organized and in regular operation for so long a time. In such cases it has been decided that the boundaries should be defined, as the district had been understood to be; and that the district should not be destroyed by any neglect of the

commissioners or clerk in making out the record in the manner required. In all cases where it can be avoided, the inhabitants of a district should not be made to suffer, for the neglect, in mere matters of form, of any of the officers of common schools. A less liberal course would often visit injustice as well upon districts as upon individuals. Under the old law, and by a former Superintendent,* it was decided that for errors of form a district should not be deprived of its money, but that the commissioners might allow the trustees in such cases to correct their reports.

Where a person who has paid a tax for a school-house is set from one district to another, without his consent, he is exempt by sec. 81 from taxation for a similar purpose for 4 years; and in order that there may be evidence at hand to prove that he was transferred without his consent, the form requires that the fact should be stated in the record. But if this is neglected by the commissioners the neglect on their part does not deprive the individual of his rights; it only subjects him to the inconvenience of proving the fact in some other way. And when this is done, the trustees would be bound to exempt him as much as if the commissioners had stated the fact in the record.

It is therefore decided in this case that district No. 13 was duly formed by the commissioners in 1830, and that the trustees thereof were authorized to return the children set to their district from No. 9, and to draw the public money accordingly.

(ANONYMOUS)

A. B. having two farms separated by a district line is taxable in each district.

By A. C. FLAGG, *July 5, 1831*. If A. B. owns two farms, and the district line separates them, he is liable to be taxed for each farm in the district where it lies.

The Trustees of school district No. 13 in the town of Avon, *against* the Trustees of district No. 9 in said town.

An appraisement of a school-house, postponed for good cause, will be confirmed when made subsequently to the formation of the new district.

The facts of this case are fully disclosed in the Superintendent's decision.

By A. C. FLAGG, *July 18, 1831*. In the case of the appeal of the trustees of district No. 13 of the town of Avon, representing themselves aggrieved by the refusal of the trustees of No. 9 of said town to collect and pay to them a certain sum,

* Mr. Yates.

according to the appraisement of the commissioners, it appears that in December, 1830, the commissioners of said town formed a new district (13) and attached to it certain persons from No. 9, which latter district was possessed of a school-house; this was not appraised at the time of the division, under an expectation, as is stated by the commissioners, that a compromise would take place between those who were set off and those who remained in No. 9, so that the trustees of the latter district would give their consent to the formation of the new district. This expectation, however, was not realized, and on the 21st of March, 1831, the commissioners met and appraised the school-house in No. 9, and apportioned fifty-seven dollars and seventy-seven cents to be paid by the trustees of district No. 9 to the trustees of district No. 13, as the proportion to which those set to the new district were entitled. The trustees of No. 9 have neglected to execute the order of the commissioners; alleging that the appraisement should have been made at the time of the division. And the trustees of No. 13 have appealed to the Superintendent, representing themselves and those for whom they act as aggrieved by the refusal of the trustees of No. 9 to execute the order of the commissioners, and pay over to them \$57.77. The trustees of No. 9, by direction of the Superintendent, have been served with copies of the appeal and have had an opportunity of showing wherein their rights have been prejudiced by the omission of the commissioners to make the appraisement at the time of the division; but have not shewn that the postponement of the valuation had any influence upon the division or the formation of the new district. It is therefore decided that it is the duty of the trustees of district No. 9, in Avon, to collect the said sum of fifty-seven dollars and seventy-seven cents from the taxable inhabitants of said district, and to pay the same to the trustees of No. 13, in the manner and for the purpose contemplated by sec. 69 of the statute relating to common schools.

(ANONYMOUS.)

A saw-mill having an agent or servant in charge of it is taxable to the non-resident owner.

By A. C. FLAGG, *August 30, 1831.* The lot in your district which has a saw-mill and dwelling-house on it, is taxable to the non-resident owner, as you say he improves and occupies the same by his agent or servant during the time for running the mill, and whenever there is water for the purpose.

(ANONYMOUS.)

Children of the overseers of poor-houses are to be enumerated by trustees of school districts.

This was an application for the opinion of the Superintendent in a case in which the overseer of a county poor-house resided in it with his wife and a number of children between the ages of 5 and 16 years.

By A. C. FLAGG, *October 15, 1831.* The children of the overseer of the poor-house, between 5 and 16 years of age, must be enumerated and returned in the annual reports of the school districts. The intention of the act of April 25, 1831, is to exclude only such children as are supported at the county poor-houses as paupers.

The Trustees of school district No. — in the town of Milan, *ex parte.*

If a person agrees to pay for a certain number of scholars he is to have the benefit of the public money in reduction of their school bills.

This was a case in which certain persons agreed to pay the tuition of a given number of scholars, whether they were sent to school or not, with a view to encourage the trustees of the district in procuring a good teacher. In providing funds to pay the teacher's wages, it was contended by some of the inhabitants of the district that the public money should be applied exclusively to the benefit of the children actually sent to school, and that the persons liable by a special agreement to pay for more scholars than they had sent could not be benefitted by an application of the public money to the reduction of their school bills.

By A. C. FLAGG, *November 5, 1831.* You ask, if an inhabitant of the district promises, in a written article, to pay \$5 a scholar for the instruction of 5 scholars and does not send any to the school, whether he can have any of the public money? I answer; he is to be treated as if he sent 5 scholars to the school all the time. The effect of his agreement is that he will be obligated to pay, whether he sends or not: that is, he is willing to be considered as sending all the time and pay accordingly. The trustees, by the same agreement which holds the subscriber to pay for five children all the time, are bound to grant the same person all the advantages which can arise from sending all the time. If he sends 3 out of the 5, he is to be charged in his bills as if he sent 5, because he has made a special agreement to be so charged, whether he sends or not: and if his absent children are considered present for the purpose of charging, shall they not be considered present for the purpose of crediting the parent,

or enabling him to share the public money in reducing his tuition bill? I think they should. The persons who have made this agreement are to have their bills made out as if they had sent the number of scholars subscribed for all the time.

The Trustees of school district No. — in the town Sangerfield, *ex parte*.

The vendor of a farm, remaining in possession, is liable for taxes assessed on it.

The facts of this case are stated in the opinion of the Superintendent.

By A. C. FLAGG, *November 7, 1831*. You state that in June, 1830, a resident and trustee of your district sold a farm to a resident of Rensselaer county, which farm was to be delivered to the purchaser in April, 1831, "free from all incumbrances, taxes being particularly specified." In November, between the time of purchasing and giving possession, a tax was voted for the school-house, and the seller, as one of the trustees, made out the tax against the purchaser, who was not yet a resident of the district.

The 76th section declares that "in making out a tax list, the trustees shall apportion the tax on all the taxable inhabitants within the district, according to the valuation of the taxable property which shall be owned or possessed by them, at the time of making out the list within the district." Under this section the trustee in possession of the farm might have been legally assessed therefor. If in equity or by contract he ought not to pay the tax, he had his remedy under the 83d section of the school statute, and if the charge had been made against the purchaser under that section it would have afforded him an opportunity to show that the seller had agreed to pay all taxes.

J. W. Brewer and others, *against* the inhabitants of school district No. 17 in the town of Hartwick.

If a legal vote, which if given might have affected the result, is rejected, proceedings will be set aside on appeal.

The facts of this case are stated in the Superintendent's decision.

By A. C. FLAGG, *November 15, 1831*. In the case of the appeal of Jonathan W. Brewer and other taxable inhabitants of district No. 17 in the town of Hartwick, it appears by the affidavit of Cornelius Woodcock that his vote was rejected by the moderator, although he has resided in the district for the last year, and rented a tenement of \$125 in value, in said district, the present year ending the 1st of April, and has paid road taxes this season; and that

his vote would have prevented the election of the present trustees. It is also proved that one person voted for the trustees who was not at the time a resident of the district. A satisfactory reason has been given for not presenting the appeal within 30 days, and notice of the appeal has been served on the clerk.

It is clearly shown that Mr. Woodcock was a legal voter, and that the rejection of his vote may have changed the result of the election. It is therefore decided that the election of district officers, in school district No. 17, Hartwick, on the 4th day of October, 1831, be, and it is hereby set aside, and the several district offices are hereby declared to be vacated: and the clerk of the preceding year, or if he is unable to attend to it, any taxable inhabitant of the district is authorized to call a special meeting, by exhibiting this order, for the purpose of choosing district officers, to hold until the annual meeting, on the 4th of October next, or until others are chosen.

The Trustees of school district No. — in the town of Alden, *ex parte*.

Clerks or journeymen, of lawful age, are entitled to vote in school districts, if they have paid taxes on the highway.

This was an application for the opinion of the Superintendent in a case where several clerks and journeymen of lawful age, who had been assessed to work on the highway, but who possessed no property, claimed to vote at a meeting which had been called to lay a tax for building a school-house.

By A. C. FLAGG, November 29, 1831. A clerk or journeyman of lawful age who is a resident of the district, and has worked or paid taxes on the highway, is a legal voter at district meetings. In the case of individuals who have no property and no interest in the school, the law may seem to operate unjustly; but an exclusion which would reach them would cut off the poor man with a large family of children requiring school accommodations, who has no freehold or property exempt from execution, and who is made a voter in the district solely on the ground of paying highway or other taxes to the town. If persons who have no care for the district should sport with its best interests, by means of their votes at district meetings, a remedy is secured by an appeal to the Superintendent, under sec. 110 of the school statute.

Peter Magher, an inhabitant of school district No. 4 in the town of Cherry-Valley, against the Trustees of school district No. 4 in the town of Maryland.

Real estate is taxable where it lies, and personal property where the owner resides.

This was an appeal by Peter Magher, who resided in school district No. 4 in Cherry-Valley, from the proceedings of the trustees of school district No. 4 in Maryland, in assessing him to pay a tax, voted to build a school-house in the latter district, on personal property possessed by him in said district. Mr. Magher was the owner or lessee of a store in the latter district, which he occupied by an agent for the sale of merchandize. The principal question involved in the appeal was, whether he was taxable for the goods in the district where the store was situated, or in the district of which he was a taxable inhabitant.

By A. C. FLAGG, *December 3, 1831.* A person can be assessed for personal property only in the district where he resides; the general tax law, section 5 of title 2, provides that every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him. Real estate is assessed in the town where it lies although the owner lives in another town. The statute relating to common schools, authorizes the tax list to be made out against all the taxable inhabitants within the district, and in relation to certain real estate, (sections 77 and 78,) declares that the owners who are non-residents, for the purposes of taxation, in relation to such land, shall be considered taxable inhabitants of the district.

But there is no such provision in relation to personal property of non-residents. Mr. Magher is assessed for his personal property embracing the goods in store in district No. 4 in Cherry-Valley, and in an assessment in the district where he resides the valuation would be taken from the town assessment, and he would pay taxes on the goods in that district. If Mr. Magher rents or owns the store in district No. 4, he can be assessed for the real property thus owned or occupied. If I am not mistaken as to the facts agreed upon by the trustees of No. 4, Maryland, and Peter Magher, the said Magher has been wrongfully assessed in said district, and the trustees will discharge him from such wrongful assessment and charge the amount to the taxable inhabitants of the district.*

* The principle of this case is settled by the case of the trustees of school district No. — in the town of Stillwater, page 71.

The President and Directors of the Jefferson County Bank, *ex parte*.

Banks are taxable for common school purposes.

This was an application to the Superintendent for the purpose of ascertaining upon what grounds the trustees of the school district, in which the Jefferson County Bank was situated, had been directed to include the property of that institution in the assessment of a tax voted to build a school-house.

By A. C. FLAGG, *December 21, 1831*. The general tax law provides for taxing banks, and the manner of collecting the tax. The school statute refers to the assessments under the general tax law, as the guide for the trustees of districts in levying taxes which they are directed to collect. The officers of the bank for the purposes of collecting this tax, are made to represent the corporate property as much as trustees, guardians, &c., are the property in their custody by section 10, title 2, of the general tax law. I conceive that the general act for the assessment and collection of taxes settles the principle as to the equalization of all taxes which are to be raised upon property, unless the law imposing the tax makes special exemptions. And instead of being under the necessity of pointing out a provision in the school law declaring that banks shall be taxed in order to sustain my opinion, I am inclined to believe that the bank ought to show a special provision exempting it from the operation of the school statute in relation to taxes, before it can claim an exemption.

(ANONYMOUS.)

Tax lists must include all taxable inhabitants; but rate-bills include such only as have sent children to school.

By A. C. FLAGG, *December 27, 1831*. School bills are made out in proportion to the number of scholars sent by each person. After exempting the indigent, the trustees are directed in subdivision 12 of section 75, to ascertain by examination of the school lists kept by the teacher the number of days for which each person not so exempted shall be liable to pay for instruction, and the amount payable by each person. The sum is assessed upon the scholar and not upon the property. A tax upon property must in all cases embrace every taxable inhabitant of the district. A rate bill for tuition embraces only such as have patronized the school by sending their children to it.

(ANONYMOUS.)

Mode of proceeding in appraising school-houses explained.

By A. C. FLAGG, *March 24, 1832.* In appraising a school-house the commissioners should give to the trustees of the old district the sum total which is to be paid to the new district, and also the names of the individuals for whose benefit it is to be paid, and the sum to which each person set off is entitled, see form page 69.

The trustees of the old district then take the amount, say fourteen dollars, and make out the tax list the same as if it had been voted to raise fourteen dollars for repairing the school-house, adding thereto five per cent for collector's fees. When collected, the money is paid to the trustees of the new district, and they credit the same to the persons who were declared by the commissioners to be entitled to it.

Moses Elkins, a teacher in school district No. —
in the town of Plattsburgh, *ex parte.*

Schools should not be kept more than six hours per day.

This was an application from the teacher of a district school for his direction in a case in which the trustees of the district had required him to keep his school open eight hours per day.

By A. C. FLAGG, *April 5, 1832.* The law is not specific as to the number of hours which shall constitute a day in teaching school. The custom of the country therefore must determine this question. So far as I am informed it is customary to keep six hours. It is not in my judgment desirable to confine children more than six hours a day.

The Trustees of school district No. 13 in the town
of Canton, *ex parte.*

A man of lawful age hired out for a year or six months, and having no family, is a resident of the district in which he is hired.

This was a case in which a young man, after having attained the age of 21 years, left his father's house, and hired himself out for six months in another school district. During the period for which he was so hired, he returned to his father's house on a visit, and claimed to vote at a meeting of the inhabitants of the district in which his father resided.

By A. C. FLAGG, *May 8, 1832.* When a man arrives at the age of 21 years, having no family of his own, and hires out for a year or six months, his residence is where he is employed, and he cannot come into the district where his father may live, and vote at the district meeting.

The Trustees of school district No. 6 in the town of Pawlings, *against* the Commissioners of Common Schools of said town.

Commissioners cannot be compelled to pay interest on moneys withheld from school districts in the discharge of their duties.

This was an appeal to the Superintendent of Common Schools under the following circumstances: In the year 1831 it was decided on an appeal by the trustees of school district No. 6 in the town of Pawlings, that the commissioners of common schools of that town should pay over to said trustees a certain amount of public money which had been withheld by said commissioners on account of informalities in the annual reports of that district. The specific sum awarded to the district by the Superintendent's decision was paid over, and this was an appeal by the trustees from the refusal of the commissioners to pay interest on the amount for the time during which it was withheld.

By A. C. FLAGG, *July 6, 1832*. In deciding that the commissioners should pay the school money to district No. 6, it was not intended to include any interest. In relation to the public money, a specific sum is apportioned to a district, and in consequence of a supposed informality the commissioners withhold it. The case is submitted, and it is decided, that all things considered, the commissioners may accept the report, or allow it to be amended, and then pay the public money as apportioned. I should not think it fair to make them pay interest if I had the power to do so.

E. Savage, a taxable inhabitant of school district No. 3 in the town of Salem, *against* the Trustees of district No. 9 in said town.

Rule of taxation applied to a particular case.

E. Savage was the owner of a farm consisting of several contiguous lots, all of which were wholly included within the boundaries of school district No. 3, excepting lot No. 227, which was included within the boundaries of district No. 9. On lot 227 there was a tenant who rented a house and a small garden spot, but the residue of the lot was worked as a part of E. Savage's farm. The question presented was whether the whole of lot No. 227 was taxable in district No. 9, or only the house and garden spot occupied by his tenant.

By A. C. FLAGG, *September 3, 1832*. It is submitted whether E. Savage is taxable in district No. 9 for lot 227, which lot forms a part of his farm, and with the exception of a house and garden spot, is now improved as a part of his farm. The 76th

section of the school act authorizes the trustees to assess taxes "on all the taxable inhabitants within the district, according to the valuations of the taxable property which shall be owned or possessed by them at the time of making out the list within the district, or which being intersected by the boundaries of the district, shall be so owned or possessed by them partly in such district and partly in any adjoining district." If there were no tenant on lot 227, it clearly would be assessed to E. Savage in No. 3, although intersected by the district line and lying in No. 9. But as there is a tenant on 227, he is taxable in No. 9 for the house and garden, or such portion as he rents, and E. Savage is taxable for the residue as a part of his farm, in No. 3 and not in No. 9. In 4th Wendell, page 429, a case somewhat similar is decided, where a farm consisted of 100 acres in Cambria, and a distinct lot of 50 acres in Lewiston; the house was on the 100 acres, and the barn on the 50 acres. It was in that case decided that the two lots formed one farm, and that the owner could not be assessed in the town where the 50 acres and barn were situated, but was taxable for the whole in the town where his house was situated. If Mr. Savage had a barn on lot 227, that being a legitimate appendage of a farm, it would not render the lot liable to be assessed in No. 9, or any part of it. It is my opinion, therefore, that the trustees of No. 9 cannot assess E. Savage in No. 9 for such part of lot 227 as is occupied by him as a part of his farm; and that the tenant on 227 is taxable for the house and garden spot only. The trustees will discharge E. Savage from the assessment, and reassess the amount put to him, upon the other taxable inhabitants of the district.

The Trustees of school district No. 3 in the town of Charlotte, *ex parte*.

Land belonging to a minister of the gospel, if leased to a tenant, is taxable.

This was an application for the opinion of the Superintendent in a case, in which a lot of land was owned by a non-resident minister of the gospel, and leased to a tenant who resided in the district, a tax having been voted to build a school-house, and the tenant having claimed an exemption under the provision of the statute, exempting under certain circumstances, the real estate of ministers of the gospel from taxation.

By A. C. FLAGG, September 10, 1832. The land owned by a minister of the gospel, if rented, can be taxed to the tenant. If the occupant is the agent of the minister, so as to render it necessary to make out the assessment against him as owner,

then the ministerial exemption may possibly extend to this lot, and release it from taxation. The exemption of the real estate of ministers of the gospel, by the 4th sec. sub. 8 of the act relating to the assessment and collection of taxes, provides expressly that real estate to be exempted from taxation, must be occupied by them.*

(ANONYMOUS.)

Taxes for fuel or repairs may be voted at annual meetings.

By A. C. FLAGG, *November 12, 1832.* A tax can be voted at the annual meeting for fuel or for repairing the school-house.

The Trustees of school district No. 3 in the town of Massena, *ex parte.*

School-houses may be used for Sunday schools.

This was an application for the opinion of the Superintendent as to the propriety of allowing the school-house in district No. 3 in the town of Massena, to be used on the Sabbath for the accommodation of Sunday schools.

By A. C. FLAGG, *December 6, 1832.* I think it is proper for the trustees to allow the school-house to be used for Sunday schools. They are so intimately and so usefully connected with the objects and purposes of the common schools, that the school-houses should not be shut against them.

The inhabitants of school district No. 24 in the town of Sempronius, *against* the Trustees of said district.

Land occupied by an agent or servant of the non-resident owner is taxable to the latter.

This was an application for the decision of the Superintendent on a statement of facts agreed on by the parties.

By A. C. FLAGG, *December 29, 1832.* In the case of the Birch lot in district No. 24, Sempronius, it appears that the owner is a non-resident of the district; that a relative of the owner lives on the lot, which has about 15 acres of 150, cleared; that it is uncertain whether the person living on the lot pays rent or not; but that in the town assessment, the lot is taxed to the owner, and not to the person living on the farm. The Birch lot is in my opinion taxable in the school district, under the 77th

* The principle of this case is settled by the decision of the Superintendent, page 22.

section, to the owner, as being occupied by his agent or servant. The 78th section under which the land cleared and cultivated, only is to be assessed, relates to such lots as are "not occupied by a tenant or agent." The principle of the law is this, that where a family is on the lot requiring and enjoying school accommodations, the whole farm shall be assessed to build the house. Where there is no occupant the non-resident owner shall only be assessed, for such parts of the lot as he cultivates, and from which he is supposed to derive some benefit. The fact that the non-resident owner in this case pays the town tax, proves that there is no arrangement or expectation between the owner and occupant, that the latter is to pay the taxes. The trustees will follow the town assessment.

The Trustees of school district No. 5 in the town of Clifton Park, *ex parte*.

A teacher, who at the commencement of a term of instruction, holds a certificate dated within a year, is a qualified teacher to the end of the term.

This was an application for the opinion of the Superintendent in a case where a female teacher held at the time she was employed a certificate of qualification, dated within a year, from the inspectors of common schools of the town. Before the expiration of her term the year ended, and her certificate was not renewed. The question presented was, whether she could be considered a qualified teacher for the whole term or only for so much of it as elapsed during the year commencing at the date of her certificate.

By A. C. FLAGG, *December 30, 1832*. In the application from district No. 5, Clifton Park, a question is presented, whether a teacher having a certificate, dated within one year of the time she was employed, but which ran out before the close of the term, is a qualified teacher under the law, and entitled to receive the public money. In my opinion she is legally a qualified teacher. Section 93 is complied with if the teacher at the time the trustees employ her had a certificate dated within one year of that time. The public money rightfully and legally can be paid to her.

Robert T. Law, a taxable inhabitant of school district No. 23 in the town of Salem, *against* the Commissioners of Common Schools of said town.

No person who is set to a new district can, without his consent, be deprived of his right to receive a portion of the value of the school-house of the district, from which he is taken.

This was an appeal from the proceedings of the commission-

ers of common schools of the town of Salem, in neglecting to appraise the school-house and property of district No. 8 in said town, on the occasion of forming a new district. It appeared, on the presentation of the appeal, that all the inhabitants of district No. 8, who were set off to the new district, with the exception of Robert T. Law, relinquished their claim to a portion of the value of the school-house belonging to that district.

By A. C. FLAGG, *January 12, 1833.* Robert T. Law of Salem, represents himself aggrieved by being set off from district No. 8, Salem, in which district there was a school-house, and being annexed to district No. 23, a joint district, without appraising the school-house and apportioning to the appellant his share of the property of No. 8. It is for redress in this particular that the appeal is made. The appellant urges that the new district should be annulled, because the school-house was not appraised. This is unreasonable and will not be granted. The person set to a new district, from an old one possessed of a school-house, has a right as an individual to his share of the value of the school-house, which he can relinquish or not as he pleases. The trustees are, to be sure, made his agents for attending to and securing his interests in this particular: but the 69th section declares, that the money received by the trustees of the new district from the old trustees, "shall be allowed to the credit of the inhabitants who were taken from the former district, in reduction of any tax that may be imposed for erecting a school-house." If the individual is willing to waive his right in the school-house, for the advantages he acquires in the new district, and is willing to pay the tax for the new school-house, he may do so. It does not appear that Mr. Law was among those who relinquished their right in the school-house, and he can properly pursue all legal remedies to get his just due. It is therefore ordered that the commissioners of common schools of the town of Salem, ascertain the proportion of the value of the school-house in No. 8, to which Robert T. Law was entitled according to the valuation of his property, and that they certify the same to the trustees of district No. 8, who are required to collect and pay over to the trustees of district 23, the sum so certified: and the trustees of district No. 23 will deduct the sum thus ascertained, and collect only the residue of the assessed tax from the said Law.

The Trustees of school district No. 4 in the town of German, *ex parte*.

An illegal vote does not necessarily vacate the proceedings of the meeting at which it is given; but if the illegal vote might have affected the result, an application may be made to the Superintendent to set aside the proceedings.

This was an application to the Superintendent for his opinion as to the effect of an illegal vote on the proceedings of the meeting, at which the vote was given.

By JOHN A. DIX, *January 31, 1833*. If a person without the requisite qualifications votes at a district meeting, his vote does not necessarily impair the validity of the proceedings, but he may be prosecuted for the offence, and will forfeit the sum of ten dollars with the costs of prosecution. If, however, it can be made to appear that the result might have been different if the illegal vote had not been given, it will be a proper case for an application to the Superintendent to set aside the proceedings.

The Trustees of school district No. — in the town of Florence, *ex parte*.

A person leasing land at halves of a non-resident owner is taxable for it.

This was a case in which a non-resident owner of land leased it to a tenant, who by the conditions of the lease was to pay to the lessor one half of the products. The question presented was, whether the land should be taxed to the non-resident owner or the lessee, who was in possession.

By JOHN A. DIX, *February 5, 1833*. If a non-resident owner of real property lets it at halves, the tenant in possession must be taxed for the whole amount assessed on the property, under section 76, 1 R. S. page 482. The apportionment of the tax between him and the owner is a question for them to settle by agreement or otherwise between themselves, and not for the trustees of the district in which the property lies. If the tax be assessed for any of the purposes specified in section 83, page 483, same vol., the tenant in possession would have a valid claim on the owner for the whole amount, provided he held upon any of the conditions recited in that section, and had made no agreement with the owner to the contrary, and the tax voted was for one of the purposes specified. This is a case of the description last referred to. The tax was for building a school-house. The tenant in possession must be looked to for the tax; but unless there was an agreement to the contrary, the owner must pay over the whole amount to him. If he will not do it voluntarily, he may be compelled by a suit at law. But the district must collect the tax of the tenant on whom it was assessed.

The Trustees of school district No. 10 in the town of Smyrna, *ex parte*.

Trustees of school districts are not required to take and subscribe the oath prescribed in the constitution.

Trustees in assessing taxes may administer an oath when a reduction is claimed.

This was an application to the Superintendent by the trustees of school district No. 10 in the town of Smyrna, for his opinion as to the necessity of taking the oath of office when they were required to proceed in the same manner as town assessors in assessing a tax, and as to their right to administer an oath to a person claiming a reduction in the amount of the valuation of his taxable property.

By JOHN A. DIX, *February 9, 1833.* The constitution of this state, article 6, provides that "members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted," shall take and subscribe the oath therein prescribed.

Whether trustees of school districts are to be regarded as inferior officers within the meaning of this provision of the constitution, may be considered doubtful. But they are charged with the exercise of certain powers for the benefit of the inhabitants of the districts for which they are appointed; and as they are entrusted with the expenditure of the income of the school fund, their trust must be regarded as partaking of a public character, if, as is said, the nature of the duty to be performed, and not the extent of the authority, determines the character of the officer. In the convention by which the constitution was framed, great differences of opinion prevailed with regard to the extent of the provision prescribing the oath of office. Some of the members were of opinion that it did not embrace town officers, that it was applicable only to those officers whose stations required them to swear to the constitution of the United States, or such as are enumerated in section 3, article 6, of that instrument. The language of this section is that "all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution," &c. The section of the constitution of this state, as originally reported, was nearly identical in language with this, so that the difficulty of construction was not relieved by the reference to the constitution of the United States. Some of the members were of opinion that town officers were embraced by it; and on the final adoption of the provision the words "except such inferior officers as may by law be exempted," were introduced as an amendment and carried, although at a previous stage of the discussion a similar

amendment was opposed as useless and withdrawn by the mover.

If any inference is to be drawn from these discussions it is that town officers were within the scope of the provision of the constitution as adopted; and it would seem, therefore, that a special exemption would have been necessary to release them from the obligation of taking the constitutional oath of office, if the law had been silent as to other officers. But such is not the case. The statute has undertaken to specify by what classes of officers the oath shall be taken. The highest judicial and executive officers in the state are required by the 1 R. S. sec. 20, page 119, to take the oath, although, if the statute had been silent, the obligation to take it, by virtue of the constitutional provision, would have been equally imperious. The course of legislation on this subject is so far important in its bearing upon the question that it may tend to throw light upon the intention of the legislature, with regard to the exemption of inferior officers from the constitutional requirement. If, from the fact that the legislature has undertaken to enumerate all the classes of officers who shall take the constitutional oath, the inference may be drawn that all inferior officers, not embraced in such enumeration, were designed to be exempted, a construction of the law which shall be in accordance with that intention ought to prevail.

With regard to certain town officers the statute is silent, while others are required to take the oath. Of the latter class are the supervisor, town clerk and others, pages 345 and 346, 1 R. S. while the commissioners and inspectors of common schools, and some others, are merely required to file in the town clerk's office a notice of the acceptance of their respective offices. The office of commissioner of common schools is a much more responsible one than that of trustee of a school district, not only as regards the more extended sphere of the jurisdiction and the nature of the duties to be discharged, but in respect to the pecuniary liability incurred, by reason of the sums of money confided to the incumbents for distribution. As these officers are merely required to file a notice of their acceptance, and as other town officers are required by the same title to take the oath, there can be no doubt that the intention of the legislature was to exempt the former from the constitutional obligation; although the exemption is left to be inferred from the silence of the statute with regard to them, and from its express provisions with respect to others of the same grade.

If this construction of the statute be correct, it would be unreasonable to suppose that it was the intention of the legislature to leave officers of school districts, who are of a grade still inferior, to the operation of the provision of the constitution prescribing

the oath of office. On the contrary, as the statute has enumerated the classes of officers, by whom the oath shall be taken; as the exemption of the commissioners and inspectors of common schools is inferred from its silence in relation to them, and as the act relating to common schools is silent as to school district officers, it may be fairly assumed that the latter were intended to be exempted. The question must manifestly be settled by construction; and as no special exemptions of inferior officers have been made by law, it is not unreasonable to infer a design to exempt in one case from circumstances, which in another case are deemed conclusive as to the intention of the legislature.

It is worthy of observation that by the acts of 19th June, 1812, and 15th April, 1814, for the establishment of the common school system, there was no provision by which trustees of school districts were required to take an oath of office, although it was provided that the clerk should be "qualified by oath or affirmation," as town clerks by law are qualified. By the act reorganizing the common school system, passed the 12th April, 1819, and repealing the act of 15th April, 1814, (the act of 1812 had been already repealed,) the provision requiring the clerk of the school district to be sworn was not re-enacted: and although the commissioners of common schools were, by the act of 1812, and both the commissioners and inspectors were, by the acts of 1814 and 1819, required to be qualified by oath or affirmation, an act was passed on the 23d March, 1821, by which the provision then existing, and prescribing such oath or affirmation, was repealed, and a notice of the acceptance of their office was substituted for it. To this act the following preamble was annexed: "Whereas the multiplication of oaths, without absolute necessity, has a direct tendency to impair the reverence due to them, and to produce consequences unfavorable to the morals and good order of society: and whereas certain oaths of office required by the laws of this state are either unnecessary in themselves, or rendered useless by the change of those circumstances which formerly required them: Therefore, Be it enacted," &c.

The exemption of commissioners and inspectors, by the Revised Statutes, from the obligation of taking the oath prescribed by the constitution, is in accordance with the provisions of this act, which certainly adds strength to the inference I have drawn, with regard to the intention of the legislature in respect to trustees of school districts.

I do, therefore, decide that trustees of school districts need not, before they enter on the duties of their office, take and subscribe the oath prescribed by the constitution of this state.

In ascertaining the value of property to be taxed, trustees are to be considered as having regularly entered on the discharge of

their duties, and competent to do any act, which the law authorizes them to perform. The affidavit of a person claiming a reduction in the valuation of his property, may be taken before the trustees or one of them. The 80th section of the title and chapter of the Revised Statutes relating to common schools, requires them in certain cases to proceed in the same manner as the town assessors are required by law to proceed in the valuation of taxable property. The 25th section of title 2, chapter 13, Revised Statutes, relating to town assessors, provides that the affidavit of a person objecting to an assessment may be made before the assessors, or one of them, who are authorized by that section to administer oaths for the purpose. The authority is given for a specified purpose, and I consider the authority to administer oaths, for the same purpose, given to the trustees by the section requiring them to proceed in the same manner as town assessors. Although it is not expressly given, they would not have the power to proceed in the same manner if, by denying to them the authority of administering oaths to persons appearing before them to dispute the justice of their assessments, they should be compelled, in order to give effect to their proceedings, to call in the aid of individuals authorized to administer oaths for other purposes.

(ANONYMOUS.)

A school must be kept twenty-six days for a month, and seventy-eight days for a quarter.

By JOHN A. DIX, *February* 11, 1833. Whenever the term "month," is used in a contract with a teacher, it means a calendar month. Twenty-six days, therefore, constitute a school month, this being the average number of days after deducting Sundays. Ninety-one days are to be considered a quarter of a year.* Whenever the term "quarter" is used as the term for which a teacher is employed, seventy-eight days will be the number, during which the school is to be kept, deducting such customary holidays as may occur during the time.

* See a case decided by A. C. Flagg, Jan. 20, 1830, page 57.

The Trustees of school district No. 4 in the town of Scriba, against the Commissioners of Common Schools of said town.

If a school district loses its portion of the public money in consequence of mislaying its annual report, the loss will, on application to the Superintendent, be allowed out of the moneys distributed the next year.

The facts of this case are fully set forth in the decision of the Superintendent.

By JOHN A. DIX, *February 18, 1833.* Whereas it has been made to appear from affidavits of the trustees and others, that the annual report of district No. 4 in the town of Scriba, for the year 1831, was regularly made and delivered to the town clerk of said town, but by mistake was not handed over to the commissioners of common schools, and by reason of this mistake said district was deprived by the commissioners of the amount of public money to which it was justly entitled for the year 1832; and it having been made to appear that said district complied in all respects with the requirements of the law: It is ordered that the amount to which said district was entitled, be ascertained and paid out of the next moneys which shall come into the hands of the commissioners of common schools of said town, and that the residue of the public money, after deducting said amount, be apportioned in the usual manner according to the reports of all the districts, including No. 4.

The Trustees of school district No. 4 in the town of Champion, *ex parte.*

School-houses cannot be used for any other than common school purposes, excepting by general consent.

A vote of a majority of the inhabitants does not render it proper to use school-houses for any other than their legitimate purposes.

This was an application to the Superintendent for his opinion upon the following questions:

1st. Whether the trustees have a right to hold the school-house of their district open for any religious or temperance meetings, when not encroaching on school hours.

2d. Whether a vote of the majority of the taxable inhabitants in any district shall decide as to the duty of trustees on the question above mentioned.

By JOHN A. DIX, *February 19, 1833.* 1st. The trustees of each school district have the custody and safe keeping of the district school-house. They have the custody of it for the purposes specified in the act from which they derive their authority; and they have, therefore, strictly no more right to allow it to be used for religious meetings, than the trustees of a religious society

would have to allow the church or meeting house to be used for keeping a school. There would be no impropriety in allowing either to be used for one purpose or the other, if no objection were raised by the district or the society. But where controversies grow out of the application of a school-house to purposes not contemplated in establishing it, it is the duty of the trustees to confine its use strictly to the legitimate objects.

2d. I do not consider the voice of a majority of the inhabitants of a district as a proper criterion for determining the propriety of applying a school-house to other uses than those for which it was designed. The law has determined this question. It cannot with strict propriety be applied to other than common school purposes. It may be otherwise used by the general consent of the parties interested. But if such use were likely to distract the district, by breeding dissensions, and a respectable minority should apply to me for an order to confine the school-house to its legitimate purposes, I should not consider myself at liberty to deny the application. The trustees therefore should so act as to render any such application to me unnecessary.

Harvey W. Babcock and Amos H. Brown, against the Trustees of school district No. 4 in the town of Milford.

A factory unoccupied is taxable to the non-resident owner, though a house on the same lot is occupied by a tenant.

This was a case submitted by the parties, on a statement of facts, for the decision of the Superintendent.

By JOHN A. DIX, *February 19, 1833.* The facts submitted in this case are briefly these: There is a lot of 97 rods of land, on which are a factory and a house, the owners being non-residents. The factory and house have been leased separately, and the valuations on the last assessment roll of the town are separate. A tax is levied to build a school-house, but at the time the tax is assessed, the factory is unoccupied, the tenant having left it. The question submitted is, whether the owners of the factory are liable for the tax assessed on it.

The general rule in relation to improved property of non-resident owners which is unoccupied, is that the non-resident owners are taxable therefor in the same manner as if they were inhabitants of the district. The house is in the occupation of a tenant, and he must be looked to for the tax upon it, which, however, he may charge upon the owners under section 83, 1 R. S. page 483, unless there is an agreement to the contrary. The tenant is not responsible for the tax assessed on the factory,

as the tenancy is altogether separate from and unconnected with it. Decision No. 25 of the Superintendent, heretofore published with the school laws, relates merely to vacant unimproved lots, and not to improved property.* In the case referred to in that decision, the tenant who occupied ten acres of improved land, on a lot of which the residue was unimproved, was considered as the agent of the owner for the unimproved part. The case now submitted is entirely different. The whole property is improved, and it would be taxable upon the non-resident owners as a whole, but for a separate lease of a portion of it. The tenant who is in possession becomes liable in the first instance, under the provisions of sec. 76, page 482, 1 R. S. for the portion which he occupies, but he is not liable for the residue. Indeed, if he were to be considered as the agent of the owners for the factory, under the decision above referred to, the effect would be only to make the non-resident owners taxable for it as if they were inhabitants. Under whatever view the question is considered, it seems to me that the non-resident owners are taxable for the factory in the same manner as if they were inhabitants of the district.

The Trustees of school district No. 10 in the town of Shawangunk, *ex parte*.

If a teacher inflicts unnecessarily severe punishment on a pupil he is answerable in damages. His government should be mild and parental; but he is responsible for the maintenance of discipline in his school.

Query.—Whether inspectors can annul a certificate except on the grounds on which their authority to examine teachers is given?

Corporal punishment has no sanction but usage.

Teachers cannot demand payment of their wages until the collector has had 30 days to collect them.

This was an application for the opinion of the Superintendent on several questions submitted to him, the nature of which is explained by his answer.

By JOHN A. DIX, *March 1, 1833*. Teachers are responsible to their employers for any abuse of their authority over the children committed to their charge. Their government should be mild and parental, but at the same time, steady and firm. If a teacher inflicts unnecessarily severe punishment upon a scholar, he is answerable in damages to the party injured. It has been doubted by some whether the inspectors have a right to annul a certificate, except upon the ground on which their authority to examine is given to them, viz., to ascertain the qualifications of teachers in respect to moral character, learning and ability. The section of the law which gives them authority to

* See case decided by A. C. Flagg, October 11, 1880, page 69.

annul a certificate, is general in its terms, but the question has been raised, whether that power is not to be construed as limited by the provisions of the other sections defining their powers.— Whether inspectors may annul a certificate because a teacher has punished a scholar with too much severity, depends on the manner in which this question is settled. The question has never been presented distinctly to the Superintendent in such a manner as to obtain his decision upon it, and I merely suggest it as a matter, which has given rise to doubt. With regard to the right to punish, no general rules have been laid down, and it would be difficult, if not impossible, to make any which would be applicable to every case. The practice of inflicting corporal punishment upon scholars in any case whatever, has no sanction but usage. The teacher is responsible for maintaining good order, and he must be the judge of the degree and nature of the punishment required, where his authority is set at defiance; at the same time he is liable to the party injured for any abuse of a prerogative which is wholly derived from custom.

The trustees must pay to the teacher the wages which they have contracted to give him; he cannot be put, against his consent, to the inconvenience of collecting his dues himself, and if the trustees, who made the contract with him, do not pay him any portion of his wages, he can prosecute them or their successors in office for the whole amount. But unless they have made some specific agreement with him to the contrary, he cannot demand payment until after the expiration of the time allowed the collector for making his return to the warrant annexed to the rate bill. He must be presumed to have made his contract with full knowledge of the requirements of the law. The trustees are to be regarded as acting in a public capacity, and they cannot be required to do more than the law enjoins upon them, unless they have made themselves responsible individually by a specific agreement to do more. The statute gives the collector 30 days to execute the warrant, and the money by which the teacher is to be paid will not be presumed to be in their hands until that time has expired. He cannot before the expiration of that time demand his wages, without showing moneys in their hands for the purpose of paying him.

Davis Gates, against the Trustees of school district No. 22 in the town of Clarence.

Separate tenancies are exceptions to the general rule of taxation with respect to farms lying partly in two districts.

In this case school district No. 22 in the town of Clarence was formed so as to intersect a farm occupied by the appellant, leaving

a part of the farm in district No. 1, from which No. 22 was taken. Mr. Gates' residence was on the part of the farm lying in district No. 22, and on the part lying in district No. 1, there were two tenants, each occupying specific portions of it.

By JOHN A. DIX, *March 6, 1833.* The general rule is that where a new district is formed, and the line is made to intersect a farm, the whole farm is to be taxed in the district where the owner resides. This would be the case with the farm in question, if Mr. Gates were the only occupant. But it appears that the two southern lots which are within the bounds of district No. 1 are occupied by two tenants. Separate tenancies are exceptions to the general rule above stated. The moment a part of a farm is leased it ceases to be an entire possession, and the part so leased must, with regard to taxation, be considered as following the residence of the lessee or tenant. The two tenants are taxable in No. 1 for the portion of the farm leased by them respectively, and Mr. Gates, whose residence is in No. 22, is taxable in the latter for the residue.

The Trustees of school district No. 4 in the town of Hinsdale, *ex parte.*

The loss of the record of a school district does not disorganize it, but the commissioners should describe the boundaries anew.

If the time for the annual meeting is unknown, application should be made to the Superintendent to fix a day for holding it.

This was a case, in which the clerk of a school district removed from it and carried away the book of records, and in consequence of the loss, the proper time for holding the annual meeting was unknown. It was also alleged that the description of the district in the town clerk's office was imperfect.

By JOHN A. DIX, *March 9, 1833.* The loss of the records of a school district does not disorganize and destroy it. If, in consequence of such loss, and the imperfection of the town records the bounds of the district have become uncertain, the defect may be remedied by the commissioners who should meet and describe them anew.*

If the time for the annual meeting is unknown, application should be made to the Superintendent of common schools who will by special order appoint a time for holding it. New district officers cannot be elected at a special meeting called for the purpose by the trustees or commissioners. This is not such a case as is contemplated by section 57, 1 R. S. page 477, where a district is dissolved, nor is it such a case as is

* See the case of the trustees of school district No. 13 in the town of Edmeston, against the commissioners of common schools of said town, page 79.

contemplated by section 71, page 480, where a vacancy exists ; but it is a special case for which no provision has been made by law, and the defect can only be remedied by the interposition of the Superintendent, who by virtue of the general authority conferred on him to pass upon all questions arising under the school laws, can afford the required relief. In the mean time, the old district officers hold over.

The inhabitants of school district No. 5 in the town of Perrysburgh, against the Commissioners of Common Schools of said town.

Improper alterations in school districts will not be sanctioned for the purpose of quieting controversies,

This was an appeal to the Superintendent under circumstances fully explained by his decision.

By JOHN A. DIX, *March 13, 1833.* It appears by the affidavits presented in the matter of appeal from the proceedings of the commissioners of common schools of the town of Perrysburgh, that the said commissioners, on the 10th of January last, divided school district No. 5 in said town, and formed a new district under the designation of school district No. 22. By this division district No. 5 is left with 28 children between the ages of 5 and 16 years, and with taxable property amounting in value to \$4,952; and district No. 22 is organized with 5 children between the ages before mentioned, and with property of the value of \$1,731. These districts united have neither too many children nor too much property to support a respectable school. On the contrary, as one district it would be inferior in strength to the average of the districts in the state; and yet this unequal division, injurious to one district and ruinous to the other, has grown out of the unwillingness of the inhabitants hitherto to agree upon a site for a school-house on terms of friendly accommodation. The Superintendent feels it his duty to re-unite the districts; and in doing so, he trusts that he does not overrate the liberality of the inhabitants in believing that they will come together again under the influence of better counsels, and with a readiness to adjust the matter of controversy, which has divided them, in a spirit of mutual conciliation. It is hereby ordered that the proceedings of the commissioners of common schools of the town of Perrysburgh, in dividing district No. 5, be annulled, and that the district be restored to its former bounds.

Moses Rowley and others, against the inhabitants of school district No. 2 in the town of Groton.

If a district is unaltered, the site of the school-house can not be changed by a vote of 14 against 8, as this is not the legal majority required.

This was a case in which the site of a school-house was changed by a vote of 14 to 8, after an alteration had been made in the district. The alteration was appealed from as illegal subsequently to the vote for changing the site, and was declared void by the Superintendent. The district not having been legally altered the change of site was appealed from as unauthorized and illegal.

By JOHN A. DIX, *March 14, 1833.* It appears by the affidavits presented in the appeal of certain inhabitants of school district No 2 in the town of Groton, that the site of the school-house was changed by a vote of the district on the 12th of December last, in consequence of an addition of families from district No. 17 in Locke and Groton, and that the school-house was subsequently moved to a point fixed by individuals, who were by general agreement appointed for the purpose. It is alleged by the appellants that the vote for removing the school-house was taken by uplifted hands. This last allegation is not expressly negatived by the statement of the trustees, and it is admitted by the latter that the votes in relation to the new site, which had been fixed by the individuals appointed for the purpose, were 14 for and 8 against it. The act of 17th February, 1831, among other requirements provides that whenever a school-house shall have been built or purchased for a district the site of such school-house shall not be changed, nor the building thereon be removed, as long as the district shall remain unaltered, unless the commissioners shall consent, and unless two-thirds of all those present at a special meeting of such district, called for that purpose, &c. shall vote for such removal, and in favor of the new site; the vote to be taken by ayes and nays, and the name of each voter, together with his vote, to be recorded. This act applies only to unaltered districts. Where therefore a school district has been lawfully altered, the school-house may be removed by a vote of a majority of the taxable inhabitants, without the consent of the commissioners. But if the district is not altered, the house can only be removed by the consent of the commissioners and a vote of two-thirds of the taxable inhabitants, to be taken in the manner pointed out by the act referred to.

By an order of the Superintendent, dated the 13th inst., the proceedings of the commissioners of common schools of the towns of Locke and Groton, dissolving joint school district No. 17, were

declared to be of no effect. The bounds of district No. 2 in Groton have therefore never been altered, and not only the consent of the commissioners, but the votes of two-thirds of the persons present are necessary to render the removal of the school-house legal. If the vote in favor of removing the school-house at the previous meeting had been taken in the mode prescribed by law, it appears, from the statement of the trustees, that the votes in favor of the new site were not sufficient, in point of number, to give validity to the proceeding. There were 22 persons present, and of these 14 were in favor of the new site and 8 opposed to it. Fourteen votes are two-thirds of twenty-one, but not of twenty-two, and are not therefore the legal number required. Without adverting to any other objection this alone is fatal to the proceeding, and renders the removal of the school-house illegal. It is therefore ordered, that the school-house be restored to its former site.

The Trustees of school district No. 6 in the town of Cobleskill, *ex parte*.

If, from unavoidable necessity, a balance of the public moneys remains in the hands of the trustees, the district may receive its share of the public moneys the next year.

This was an application to the Superintendent for his opinion in a case where a school had been kept in a district five months by a qualified teacher, to whom a portion of the public money was paid; the residue was retained for the fall term, but the trustees, notwithstanding due diligence on their part, could not procure a teacher; so that at the end of the year a balance of the public moneys remained in their hands.

By JOHN A. DIX, March 16, 1833. The Revised Statutes, vol. 1, page 471, section 24, provide that no money shall be apportioned to a school district unless all moneys received from the commissioners of common schools during the year ending on the 31st December preceding the apportionment shall have been applied to the payment of the compensation of a qualified teacher. The same section also requires that a school shall have been kept in the district by a qualified teacher during three months. The statute had in view two objects: 1st, to secure a proper school to the district, during a specific term; and 2d, to secure the application of the public moneys for the benefit of those who are entitled to them during the year for which they are apportioned. The penalty annexed to a non-compliance with these provisions is the loss of the public moneys to the district the ensuing year. Cases may occur in which all the public money could not have been expended as contemplated by the statute.

It may have happened that a teacher could not be procured, even by extraordinary diligence on the part of the trustees; the teacher may have violated his engagement; or the district may, through some unforeseen accident, have been deprived of his services, so that all the public money could not properly have been expended. In every such case, where the school has been kept three months by a qualified teacher, it is just that the equitable rights of the district should be preserved; but this can only be done by a special interposition on the part of the Superintendent. The cases referred to are not provided for by the statute; but they have always been considered as coming within that general supervision of the common school system which the law has confided to the Superintendent.

(ANONYMOUS.)

If the title to the site of the school-house fails, a new one may be fixed by a majority of votes.

By JOHN A. DIX, *March 18, 1833.* If a district is divested of its supposed title to the site of a school-house, the inhabitants may choose another by the votes of a majority without the consent of the commissioners of common schools. Where the owner of the land on which a school-house stands, and which has been occupied by his suffrance merely, but without any formal agreement, refuses to allow it to be used for the purpose any longer, the district must be considered without a site, and may therefore designate one by a majority of votes, in the same manner as in fixing a site originally.

The inhabitants of school district No. 6 in the town of Harpersfield, and of district No. 7 in Harpersfield and Kortright, *against* the Commissioners of Common Schools of said towns.

New districts should not be formed without sufficient strength to support respectable schools.

The facts of this case are given in the Superintendent's decision.

By JOHN A. DIX, *March 20, 1833.* After a full examination of all the papers presented in the matter of appeal of certain inhabitants of school district No. 6 in Harpersfield, and district No. 7 in Harpersfield and Kortright, from the decision of the commissioners of common schools of said towns, in refusing to form a new district, the Superintendent of common schools deems it proper to sustain the said decision.

He has not come to this determination without difficulty. The

situation of several of the appellants in relation to their respective schools is inconvenient, and the expense of education burdensome; and if he could have afforded them the required relief, without doing injustice to long established districts, he would not have declined interposing for the purpose. But it appears by an examination of the papers submitted, that district No. 6 as now organized, has but 34 children between the ages of 5 and 16 years, and a valuation of 15,370 dollars, and that district No. 7 has but 29 children between the ages aforesaid, and a valuation of 10,449 dollars. The number of children and the amount of taxable property in each of these districts, is certainly no more than sufficient to support respectable schools; and if the appellants should be set off from them and organized into a separate district, there is reason to apprehend that the interests of the old districts would suffer severely, without affording any material relief to the new. At all events, the relief afforded to the latter would hardly be sufficient to justify a measure which threatens the prosperity if not the existence of the old districts. In districts thinly inhabited, the evils from which the appellants seek to be relieved, are of frequent occurrence, and whenever they can be removed without producing others equally oppressive, the required relief will not be withheld. But the Superintendent is of opinion that the case before him, for the reasons above assigned, is not so strong as to justify his interposition to overrule the decision of the commissioners. It must be left to them and their successors, to make the necessary alteration, at some future time, should a change of circumstances authorize it, so that it can be done in justice to all parties. It is ordered that the appeal in this case be dismissed.

The Trustees of school district No. 24 in the town of Fishkill, *ex parte*.

Trustees are bound to know the condition of the taxable property of their districts, so that in assessing taxes no person shall be improperly taxed.

This was an application for the direction of the Superintendent in a case in which the trustees making the application had included in a tax-list a non-resident, who owned a lot of land in the district, partly cleared and cultivated, without making any deduction for the unimproved part.

By JOHN A. DIX, April 1, 1833. It is the duty of the trustees of a school district to ascertain what property in their district is liable to taxation. They are required, it is true, to make out their tax-lists from the last assessment-roll of the town. But they know that in town assessments all lands are included, whether cultivated or not, while the law expressly provides that only

such part of the lands of non-residents as is cleared and cultivated shall be liable for taxes for common school purposes. It is manifest, therefore, that the assessment roll of the town is not a guide in all cases; it must of necessity be departed from sometimes, and it is the business of the trustees to inform themselves as to the condition of the taxable property of the district. It is not necessary for a non-resident to claim a reduction in such a case as this. It is enough that the property was not taxable. The collection of that part of the tax which was assessed upon unimproved land cannot be enforced against the non-resident.

The Trustees of school district No. 5 in the town of Ripley, *ex parte*.

A tax-list must include all the taxable inhabitants of the district at the time when it is made out, though some of them may have become so after the tax is voted.

This was an application to the Superintendent for his opinion as to the propriety of including in a tax-list a person who moved into the district after the tax was voted, but before it was assessed by the trustees.

By JOHN A. DIX, April 4, 1833. Tax-lists must include all the taxable inhabitants residing in the district at the time the lists are made out.

It makes no difference, therefore, whether the individual referred to in the case stated by you, was an inhabitant of the district or not at the time the tax was voted, provided he was residing in the district at the time the tax-list was made out.

The inhabitants of school district No. 13 in the town of Ithaca, *against* the Commissioners of Common Schools of the towns of Ithaca, Enfield, and Ulysses.

School districts must be composed of contiguous farms.

The circumstances under which this appeal was brought are set forth in the Superintendent's decision.

By JOHN A. DIX, April 10, 1833. On the 28th of February last the commissioners of common schools of the towns of Ithaca, Enfield, and Ulysses formed a new school district, designated as district No. 27, by setting off a part of district No. 13 in Ithaca, and three other districts east and west of it. From this proceeding sundry inhabitants of district No. 13 have appealed. All the persons set off to form the new district acquiesce in the proceeding, with the exception of Anthony Davenport and Moses Van Orden, the former of whom has only one child

and no taxable property, and the latter taxable property to the value of \$300, and no children. It does not appear that either of these two persons has any particular cause of dissatisfaction with the arrangement to which they object; their opposition to it rests upon the general grounds taken by the other appellants, consisting of a large portion of the inhabitants of district No. 13. The principal objection raised by the appellants to the division of district No. 13, is that the arrangement is such as to separate the lands of three persons who remain in district No. 13 from the other territory which composes it. To this objection the commissioners of common schools furnish no reply. The facts stated by the appellants are therefore assumed to be true. Without adverting to the other points presented by the appellants, this is of itself sufficient, in the estimation of the Superintendent, to justify a reversal of the proceedings of the commissioners. School districts should be formed of contiguous farms; and if the example of forming them of farms not adjacent to each other, should be sanctioned, it is difficult to foresee what disorder and confusion it might not create, besides opening a door to unequal and unjust organizations. It is therefore ordered, that the proceedings of the commissioners of common schools of the towns of Ithaca, Enfield, and Ulysses, in forming school district No. 27, by an alteration of district No. 13 in Ithaca, and other adjoining districts, be, and they are hereby annulled.

The Commissioners of Common Schools of the town of Berkshire, *ex parte*.

A school district formed in October, may receive a portion of the public money, when the districts, from which it was taken, have complied with the law.

This was a case, in which a school district was formed in the month of October, and in its annual report dated the 1st of January ensuing, the trustees could not state that a school had been kept in it 3 months by a qualified teacher during the year ending at the date of the report. The question submitted to the Superintendent was, whether the district could receive a portion of the public money the year succeeding its formation.

By JOHN A. DIX, April 15, 1833. The annual reports of the trustees of school districts cannot embrace any transactions subsequent to the last day of December. The district referred to was formed in October. A school could not, therefore, have been kept for three months before the expiration of the year, when, if at all, its transactions should be reported. If under these circumstances, the district was formed from districts in which a school was kept three months, by a qualified teacher, it is entitled to receive the public money according to the number of

children, over the age of 5 and under 16 years, on the same principle that the districts from which it was taken are entitled to their share. By referring to the act of 21st April, 1831, you will perceive that this is precisely the case contemplated by that act, and that section 26 of the school law is made to apply to it. The number of children residing in the district is therefore, all the commissioners need to know.

The Trustees of school district No. 3 in the town of Corinth, *ex parte*.

If a school has not been kept in a district three months during the preceding year, by a qualified teacher, in consequence of any over-ruling necessity, the district will be allowed a portion of the public money.

By JOHN A. DIX, April 22, 1833. It has been made to appear by the affidavit of Isaiah White and Aster Eggleston, two of the trustees of school district No. 3 in the town of Corinth, that a school was kept in the district more than two months by a qualified teacher during the summer of 1832, and that they engaged a teacher to commence his school, on the first day of December of that year, but that he failed to perform his agreement and did not commence until the 17th of that month, by which means, the full term of three months, during which a school is required by law to be kept, in order to entitle the district to a share of the school moneys, was deficient to the number of three or four days. It further appears, that every exertion was made to procure another teacher, but without success. Under these circumstances, as no negligence appears on the part of the officers of the district, and as the failure to comply, to the letter, with the requirements of the law, is the result of causes not under their control; it is hereby ordered, that the commissioners of common schools of the town of Corinth, pay to the trustees of school district No. 3, the amount of public money which that district would have been entitled to receive on the 2d Tuesday of this month, if the full term of three months had appeared by the report of the trustees to have been the period during which a school had been kept by a qualified teacher.*

(ANONYMOUS.)

Collectors are allowed the usual fees of distress and sale, in addition to 5 cents on each dollar, when they take and sell the property of delinquents.

By JOHN A. DIX, May 17, 1833. The fees of a collector

* The principle of this decision is identical with that, by which the case of the trustees of school district No. 4 in the town of Somerset, page 84, was settled.

of a school district are regulated by the 104th section of the school act, when moneys are collected and paid over in the usual mode. But the 88th section supposes an extraordinary mode of collection, and in the cases contemplated, I consider the collector entitled to the usual fees allowed by law in such cases, and also to the 5 per cent given by section 104. By the acts of 21st of April, 1831, and 26th April, 1832, all taxes (including rate bills) are to be collected by distress and sale of the goods and chattels of delinquents, where they are not paid on demand to the collector. The usual fees must be allowed in all such cases, and also 5 per cent for every dollar collected and paid to the trustees. The fees are an extraordinary compensation for extraordinary trouble and service, and there is no authority to withhold the 5 per cent.

The inhabitants of school district No. — in the town of Otto, *ex parte*.

A verbal resignation by district officers is good.

If the school district offices are all vacated by resignation, notice of such resignation may be given to the town clerk.

When the offices in a school district are all vacant the commissioners of common schools may call a meeting to fill them.

The material facts of this case are stated in the Superintendent's opinion.

By JOHN A. DIX, May 24, 1833. It appears that the trustees and clerk of the school district, within which you reside, resigned verbally to three justices of the peace of the town, and that the said justices filed a certificate to that effect with the clerk of the commissioners of common schools (the town clerk) of said town. The commissioners issued a notice for a district meeting, which was served by a taxable inhabitant in the manner prescribed by law, when a district is formed; the meeting was held accordingly, and new officers were elected. On this statement of facts it seems to me, that three questions only can arise—1st. Was a verbal resignation sufficient? I am of the opinion that it was. It is undoubtedly desirable in all cases, that resignations should be in writing, in order that any dispute as to the tender of the resignation, may be settled by a reference to the document itself. But the statute does not require that it shall be in writing, and it is therefore sufficient if it be verbally tendered. 2nd. Was the service of the notice on the town clerk; a sufficient compliance with section 73 of the Revised Statutes, relating to common schools? I think it was. The trustees and clerk had all resigned. There was no person in office, on whom the notice could be served, in strict conformity to the provisions of the section referred to. The justices of the peace were justified by the

necessity of the case, in giving the notice to the town clerk, who was certainly the most proper person to receive it, as will appear from my answer to the next and last question. 3d. Had the commissioners of common schools of the town authority to call a meeting for the purpose of electing officers to fill the vacancies in question? I think they had. Section 57 of the common school act, provides, that in case a school district shall be dissolved, after having been formed and organized, "so that no competent authority shall exist therein to call a special district meeting," &c. the commissioners shall proceed to give the notice required in forming a new district. Although the resignation or death of all the officers of a district, who have any agency in calling special meetings may not absolutely dissolve the district, it is a case in which there is no competent authority existing in the district to call a meeting. It may, therefore, be fairly considered as coming within the section last referred to, and warrants the interposition of the commissioners: Hence the propriety of the service of the notice by the justices of the peace on the clerk of the commissioners. The new district officers should go on with the performance of their duties, if the above are the only questions raised in the matter of their election.

The Trustees of school district No. 5 in the town of Blenheim, *ex parte*.

The only three legal modes of providing fuel explained.

In district No. 5 in the town of Blenheim, it had been customary at the annual meeting to give a contract for the wood to be furnished for the winter school to the lowest bidder per cord, and a vote was then taken that the amount, when ascertained, should be paid by those who sent children to school. In the case, which gave rise to this application to the Superintendent, one or two individuals refused to pay for their proportion of the wood so furnished.

By JOHN A. DIX, May 24, 1833. There are but three legal modes of providing fuel for the use of a school district: 1st. To lay a tax for purchasing it. 2d. To require the inhabitants sending children to school to furnish their just proportion; and 3d. If they refuse on notice to provide it, the trustees may furnish it and charge the persons in default with the amount. None of these modes have been adopted in the case stated to me; but the inhabitants of the district have agreed to pay for it, by an informal assessment on those who send children to school, the wood being furnished by the person who would engage to provide it at the lowest price. To this mode there is no objection, so long as all acquiesce in it and pay voluntarily. But if any

person concerned refuses to abide by the arrangement, the difficulty cannot be adjusted by a recurrence to the provisions of the law, which you will perceive affords no remedy in such a case. There is no authority to enforce the collection of a tax or assessment not imposed in the prescribed modes.

The clerk of school district No. 24 in the town of New-Paltz, *ex parte*.

A tax to pay the rent of a school-room cannot be assessed on those who send children to school.

If trustees hire a room without being authorized by a vote of the district, they are personally responsible for the rent.

In school district No. 24 in the town of New-Paltz, a tax had been voted for several successive years to pay the rent of a school-room, (the district being destitute of a school-house,) and paid voluntarily by the persons who sent children to school. In the case which gave rise to this application the usual vote had not been passed, but the trustees engaged a room and employed a teacher in pursuance of the customary practice.

By JOHN A. DIX, *July 8, 1833*. The law intends, where a school district is destitute of a school-house, that the rent of a house or room shall be paid by means of a tax assessed upon the property of the district. This cannot be done, however, unless the tax is voted by the taxable inhabitants. Nor can the amount of the rent be assessed and levied exclusively upon those who send children to school. They may, if they please, pay it by voluntary contribution, but it is not in the power of the inhabitants of the district to annex such a condition to a tax. If the trustees hire a house or room without being authorized so to do by a vote of the district, they will be personally responsible for the rent, although it would be exceedingly illiberal on the part of the district, under the circumstances, to refuse to provide the means of paying it, if the house or room was hired in good faith and actually occupied as a school-house.

The inhabitants of school district No. 7 in the town of Freetown, *against* the Commissioners of Common Schools of said town.

If the annual meeting is void, the persons in office hold over; but the commissioners of common schools cannot, in such a case, call a meeting or appoint officers.

The facts which gave rise to this appeal are given in the Superintendent's decision.

By JOHN A. DIX, *July 10, 1833*. On examination of the ap-

peal of certain inhabitants of school district No. 7 in Freetown, it appears that at the time fixed for the last annual election, only two of the inhabitants of said district appeared, and that they proceeded to appoint district officers. Subsequently on the 30th April, 1833, the commissioners of common schools of Freetown, on the application of some of the inhabitants of the district, issued a notice for a meeting for the purpose of electing district officers, thereby assuming the proceedings of the annual meeting at which only two persons were present, to be void. On further examination, and before the time for holding the meeting appointed by them, the said commissioners issued an order appointing two individuals to district offices, which had become vacant, and which the district had neglected to fill, thereby acknowledging the legality of the proceedings of the annual meeting and virtually annulling their notice for holding another. The proceedings of the commissioners are irregular and cannot be sanctioned. They had no authority to issue an order or notice for an election of district officers. After a district has been organized, and has not been dissolved, and so long as there is any competent authority within to call special meetings, elections must take place at the annual meetings of the inhabitants, at special meetings called to fill vacancies, or at a meeting ordered by the Superintendent of common schools. In this case the district had not been dissolved. If, therefore, the proceedings of the first meeting were valid, the officers chosen by the persons there present, were the lawful officers of the district. If the proceedings of that meeting were not valid in consequence of the neglect of a sufficient number of the inhabitants to assemble, then the persons in office would hold over till the next annual meeting. In either case the commissioners had no power to call a meeting for the election of district officers.

The Superintendent does not deem it necessary or proper to say what number of the inhabitants of a school district, assembled in pursuance of a notice regularly given, at the time and place fixed for the annual meeting, shall be sufficient to render legal an election of district officers. Every such case will be determined upon an examination of the attending circumstances. But if the inhabitants of a school district take so little interest in its concerns as to neglect to attend their annual meeting at the proper time and place, they can have no just cause to complain if they find district officers imposed on them by a very few votes.

In consideration, however, of all the facts of this case, it is hereby ordered, that the trustees of school district No. 7 in Freetown, who were in office previous to the last annual meeting, which was attended by only two of the inhabitants, do immedi-

ately give notice, in the manner required by the 56th section of the Revised Statutes relating to common schools, to all the taxable inhabitants of said district, to meet at a certain time and place, which shall be specified in said notice. When the inhabitants, or such of them as may attend, shall be assembled, they will proceed to elect officers for the district, who will serve until their next annual meeting. Immediately after such election shall have been made, the time and place for holding the next annual meeting will be fixed.

The Trustees of school district No. 5 in the town of Ripley, *ex parte*.

After a lapse of months proceedings will not be disturbed on a mere allegation of irregularity.

School district No. 5 in the town of Ripley, having become disorganized, and no competent authority existing therein to call a meeting of the inhabitants, the commissioners of common schools prepared a notice appointing time and place for a district meeting, and delivered it to one of the taxable inhabitants, who served it on the others. The meeting was held in pursuance of the notice, district officers chosen, and a tax voted to build a new school-house, the old one having become dilapidated. The construction of the school-house was immediately commenced, and the tax was assessed; but objections having been raised by some of the inhabitants to the regularity of the proceedings of the commissioners, the trustees, with the hope that the opposition would ere long be abandoned, neglected to issue a warrant for the collection of the tax. The exception taken to the proceedings of the commissioners was, that their notice did not contain a complete description of the boundaries of district No. 5, but merely referred to them as before established and described in the town records. Under these circumstances, and after the lapse of several months, the direction of the Superintendent was solicited by the trustees.

By JOHN A. DIX, August 1, 1833. If all the inhabitants of your school district received proper notice of the meeting called by the commissioners, I will not allow a mere irregularity in the form of the notice to vitiate the subsequent proceedings. Where an irregularity occurs in the proceedings of school officers, exception should be taken to them by appeal within thirty days. But if the defect is not taken advantage of, a party cannot be permitted to come in after a lapse of months and object to proceedings on account of a mere irregularity. If the commissioners had acted wholly without authority, the case would be different; but as they had full power to act, and as the district has been

regularly organized, a tax voted, and the construction of a school-house commenced, and no exception taken to the proceedings by the parties concerned within the time limited by regulation, I will not allow the district to be disturbed by inquiring into the correctness of these proceedings upon a bare allegation of irregularity. If the inhabitants, or any part of them, refuse to pay on demand their portion of the tax voted for erecting the school-house, I will, on application, grant an order authorizing the amount due to be collected, unless cause to the contrary shall be shown. In case of such an application, it will be proper to notify the persons who refuse to pay.*

The Trustees of school district No. 12 in the town of Williamson, *ex parte*.

Taxes ought to be assessed within the time prescribed by law. But quere? Whether trustees may not assess them after the expiration of the time? If the inhabitants of a district direct a tax to be collected in a mode not recognized by law, and the trustees execute such direction, the Superintendent will not interfere.

In the year 1833 a tax was voted in school district No. 12 in the town of Williamson, to build a school-house. For the purpose of saving the collector's fees it was agreed, at the same time, that the trustees should not make out a formal tax-list, but that each individual should pay the amount due from him into their hands, when the money should be required for constructing the house. It was, however, understood that in case any one refused to pay, a warrant should be made out, and the collection of his portion of the tax enforced against him. All the inhabitants paid their proportion of the tax voluntarily, excepting A. H. who repeatedly promised to pay, but after the lapse of a year refused to do so. In this state of things the trustees applied to the Superintendent for his direction.

By JOHN A. DIX, *August 1, 1833*. The Revised Statute relating to common schools, provides, that every district tax shall be assessed and the tax-list thereof be made out by the trustees within one month after the tax shall have been voted; a warrant directed to the collector must also be annexed thereto, and the collector must make his return within a certain time. If all this be not done within the time limited, the tax should be voted anew. Property in school districts is frequently changing hands, and a tax levied for the benefit of a district should be paid by those who

* If the circumstances under which the decision of the supreme court in the case of *Ring vs. Grout*, (see page 18, note,) are correctly apprehended, the case above reported is identical with it. That the principle of the decision of the supreme court is applicable to this case there can be no doubt.

vote it. If trustees may defer making out an assessment more than a month, they may for a year, and purchasers may frequently find themselves burdened with a tax in laying which they had no voice, and from which they can derive no benefit, as in the case of a sum raised to pay for fuel, which has been consumed. The directions of the statute ought, therefore, to be strictly pursued, and no agreement among the inhabitants can have the effect of superseding those directions even with the assent of all the individuals affected by such agreement. If A. H. promised to pay his portion of the tax, and the trustees relied on his promise instead of enforcing the collection of the tax in the manner prescribed by law, it is at their peril, or at the peril of the district, if the understanding was that the collection might be deferred beyond the time limited, and made in a mode not recognized by the statute. The parties have undertaken in this case to set aside the requirements of the law altogether. They have done so for the purpose of avoiding the payment of the collector's fees, and the matter must now be arranged among themselves. The authority of the trustees to make out a tax-list after the lapse of a month, may not, in strict construction of law, be vacated by their neglect to do it within that time. The general rule is, that "where a statute specifies the time within which a public officer is to perform an official act regarding the rights and duties of others, it will be considered as *directory* merely, unless the nature of the act to be performed, or the language used by the legislature shows that the designation of the time was intended as a limitation of the power of the officer." 6 Wendell, page 487. Neither the nature of the act to be performed, nor the language of the law in respect to the assessment of taxes in school districts, may be such as to render it an exception to the general rule; but when it is considered that the remedy in enforcing the collection of such taxes, is solely against the personal property of the individuals on whom they are assessed, that it does not reach the real estate lying in the district, and that "the taxable inhabitants residing in the district at the time of making out the tax-list," are the only persons who can be included in it, certainly every principle of equity demands that there shall be no delay in enforcing the collection. But independently of any consideration affecting the right of trustees to make out a tax-list after the time prescribed, there are difficulties in this case which are, in the opinion of the Superintendent, insuperable. If the trustees were to be authorized to make out a tax-list now, they would be compelled to assess the whole tax upon "all the taxable inhabitants residing in the district at the time of making out the list," and they must, of course, add five per cent for collector's fees on the whole amount. They might, in their direction to the collec-

tor, give credit to all the inhabitants who have paid, and thus, in effect, make the warrant applicable to A. H. alone, he being the only delinquent. But after having deprived the collector of his fees on the greater part of the tax, it would be unjust to him to require him to collect a small balance. The Superintendent has decided that the vote of a district meeting reducing the fees of the collector has no validity; that the law fixes his fees at five per cent on each dollar collected and paid over by him, and that this provision cannot be affected by the vote of a district meeting. He has also decided that trustees have no authority to receive taxes from individuals, and thus deprive the collector of the fees to which he is entitled.* To allow a warrant to issue for the purpose of collecting the amount due from A. H. would indirectly sanction a practice which has been uniformly condemned, and would give countenance to a laxity of proceeding, which is a perpetual source of embarrassment and controversy. Under all the circumstances of this case, therefore, the Superintendent deems it most proper not to interfere; and it is submitted to the inhabitants of the district whether they had not better make up the deficiency out of their own pockets, and learn from it the lesson that it is always most safe to pursue the course pointed out by the law instead of attempting to set aside its requirements. The absence of a legal remedy against A. H. constitutes no justification of his conduct. He who will avail himself of a technical advantage to violate his repeated promises and evade his proper share of a burden so essential to the well being of his neighborhood as the support of the district school, will be likely to lose in character much more than he will gain in pecuniary benefit.

The inhabitants of school district No. — in the town of Cairo, *ex parte*.

No child residing in a school district can be excluded from the school on account of the inability of the parent to pay his tuition.
Select schools cannot be kept in district school-houses.

This was a case in which the trustees of a school district authorized a teacher to open a select school in the district school-house, giving notice that no child would be admitted unless his parent or guardian became a subscriber at a stipulated price for each scholar.

By JOHN A. DIX, August 13, 1833. The trustees of a school district are by the statute charged with "the custody and safe keeping of the district school-house;" but they are not to employ it for any other uses than such as conduce to the benefit of

* See the case of Isaac Sherman, collector of school district No. 4 in the town of Spencer, *against* the trustees of said district, page 54.

the district. The school-house is provided by a tax upon the district, and it should not be used for private purposes. If a school is opened in it, every inhabitant of the district is entitled to send his children to it, for which privilege he must pay his proportion of the teacher's wages. No child residing in the district can be excluded from it on account of the inability of the parent to pay for his tuition. Every school which is opened in a district school-house is to be considered as a public school, so far as the right of the inhabitants to send to it is concerned; and this right cannot be impaired by the manner in which the school has been got up. Select schools should not be kept in district school-houses. The teachers of such schools can, of course, receive none of the public money. If the practices alluded to in your letter prevail in your district, I will on complaint to me, with notice to the trustees, make an order directing them to be discontinued.

The Trustees of school district No. — in the town of Hornellsville, *ex parte*.

Certificates of qualification given after the commencement of a term, are good in some cases.

The inspection of a teacher after the close of a term, with a view to enable him to receive the public money, is inadmissible, excepting under extraordinary circumstances.

This was an application for the opinion of the Superintendent in a case where the trustees of a school district employed a female teacher who had received certificates of qualification from the inspectors of two different towns during the two preceding years, neither of which certificates, however, were dated within a year from the time when she commenced her school. Before the close of the term, she applied to the inspectors for an examination, which they refused to grant, upon the ground that she was not a qualified teacher at the commencement of the term, and that they could not render her so by giving her a certificate then.

By JOHN A. DIX, *September 14, 1833*. Teachers of common schools should, at the time they are engaged, hold a certificate of qualification, dated within a year, from the inspectors of common schools of the town in which they are employed. In extraordinary cases (and I consider the case stated by you to be such a one,) certificates have been given and accepted as sufficient, though dated subsequently to the commencement of the term. The inspectors were in duty bound to inspect the teacher, and to give her a certificate dated on the day of her examination, leaving the sufficiency of the certificate for any purpose to be determined by the proper authority. Trustees are inexcusable for neglecting to ascertain when they employ a teacher

that he or she holds a sufficient certificate; but at the same time, if the teacher is qualified excepting in the mere form of holding a certificate dated previous to the commencement of the term, I should deem it my duty on appeal to protect the rights of the teacher and the district, by giving effect, so far as may be done with propriety, to a certificate dated subsequently to the commencement of the term. But I should not consider it proper to treat a teacher as qualified, according to the intention of the law, who had not obtained a certificate till after the expiration of the term, unless the inspectors, as in this case, had refused to examine him or her on application to them for that purpose, or unless some overruling necessity had prevented a compliance with the conditions of the law.

(ANONYMOUS.)

Teacher may dismiss his school on Saturday afternoon.

By JOHN A. DIX, *September 18, 1833.* In reply to the queries contained in the statement left at my office some weeks ago, I now proceed to give the required information.

1st. If a teacher is employed by the week, he is bound to keep his school open from Monday morning until Saturday noon. He is not bound to keep school on Saturday afternoon, unless he has expressly agreed so to do.

2d. A teacher has a right to dismiss his school on Saturday afternoon under a contract to teach by the month or week, and still he is to receive credit for an entire day, unless by the terms of the contract he has engaged to teach on Saturday afternoon. There is no inconsistency in decision 81 of the Superintendent of Common Schools, published with the common school law.* "If the school is dismissed on the afternoon of Saturday, the teacher is not required to make up the time after the expiration of his month." In other words, he may dismiss his school on Saturday afternoon, and yet each Saturday is to be reckoned as a whole day in making up the twenty-six days which constitute the month. "If he keeps the whole day, he does not gain time thereby, but must continue his school until the month is fully ended." That is, although he has a right to dismiss his school on Saturday afternoon, yet if he does not choose to do so, Saturday is still to be reckoned as one day, precisely in the same manner as if he had dismissed his school for the afternoon. This rule does not conflict at all with that part of the decision which declares 26 days to be a school month. A quarter of 26 days is a quarter of a school month, but a quarter of a month is

* See a case decided January 20, 1830, by A. C. Flagg, page 57.

not a week. A week is not a component part^{of} a calendar month, which is computed altogether by days. Where a teacher contracts to teach a school for one month, he is to keep his school open 26 days, with the exception that it may be dismissed on Saturday afternoon, and yet he will receive credit for a whole day.

3d. The right to dismiss a school on Saturday afternoon resides with the teacher. It depends, however, wholly upon usage, and the trustees of a school district may entirely control it by inserting in their contract with the teacher, a provision which shall make it obligatory on him to teach during the whole day on Saturday. Such a provision I should consider unwise. If children study diligently during five days and a half in the week, they ought to be allowed half a day for amusement and recreation.

The Commissioners of Common Schools of the town of Marbletown, *ex parte*.

Where a new district is formed, and the trustees of the district from which it is taken do not consent to the alteration, no act can be done in pursuance of it until three months after notice.

In the spring of 1832 the commissioners of common schools of the town of Marbletown formed a new school district, by the consolidation of two existing districts, and prepared a notice for a district meeting within 20 days, and delivered it to a taxable inhabitant. The trustees of neither district consented to the consolidation, but notice in writing was given to them. A meeting was held, in pursuance of the notice given by the commissioners for the purpose, and the district was organized by appointing officers. In the fall of 1832, in consequence of some objections to the former proceedings, the commissioners issued a second notice for a district meeting, which was held accordingly, and another set of officers elected. The question submitted to the Superintendent was, which set of officers was legally chosen.

By JOHN A. DIX, *September 18, 1833*. It has always been held by the Superintendent of Common Schools that no act could be legally done towards the organization of a new school district, by the inhabitants thereof, (unless the consent of the trustees of the district or districts from which it was taken had been obtained,) until three months after service of a notice in writing upon the latter. The reasoning upon which the rule is founded is this. The law provides that no alteration in a school district, made without the consent of the trustees, shall take effect until after three months, &c. No competent authority, therefore, can exist in a new district to hold meetings and elect officers until after the three months have expired. The commissioners of

common schools, after forming a school district must issue a notice within twenty days describing the district and appointing time and place for the first district meeting. But, unless the consent of the trustees of the district out of which the new one was formed has been obtained, the time appointed for holding the meeting ought not to be within three months from the time of serving notice of the alteration upon them.

Although the warrant for holding an election, (i. e. a notice for the first district meeting,) was issued within 20 days after the formation of the district, it does not appear whether the election was appointed on a day within three months from the time of serving a written notice on the trustees of the two districts affected by the consolidation.

If the first election was held after the expiration of three months from service of such notice, it was valid and the second election was void.

Joseph Allen and others, *against* the inhabitants of school district No. 11 in the town of Oppenheim.

An error being shown in counting the votes at a district meeting, for a tax for building a school-house, a new meeting will be ordered.

The facts of this case are given in the Superintendent's order.

By JOHN A. DIX, *September 20, 1833.* On examination of the appeal of certain inhabitants of school district No. 11 in the town of Oppenheim, from the proceedings of a district meeting held on the 15th July last, it appears that a vote was taken to build a new school-house, and was declared by the moderator to be carried. The moderator swears to these facts, and adds, that he kept minutes on paper of the votes taken at the meeting, and that, from an examination of said minutes afterwards as well as from other circumstances, he is satisfied there was an error in his decision; that there was an equal number of votes for and against building a new house, although he supposed when he announced the vote that there was a majority of one in favor of it.

Without regard to any other testimony this alone is sufficient, in the opinion of the Superintendent, to require that the question should be again submitted to the district. In the adoption of a measure so important to a school district as that of building a school-house nothing should be left to uncertainty. The opinion of the parties should be so clearly expressed that it cannot be drawn into dispute and thus made a source of controversy.

It is therefore ordered, that the proceedings of the meeting held in district No. 11, on the 15th July be set aside, and that the question of building a new school-house be submitted to a

meeting of the taxable inhabitants of the district, to be called for that purpose at an early day by the trustees.

Amos Haskins, *against* the Trustees of school district No. 5 in the town of Ripley.

Trustees have no right to include in a rate bill a sum of money to procure premiums for scholars; nor can a tax be laid for the purpose.

This was a case in which a sum of money to procure premiums for the most-meritorious scholars was included in a rate bill for the teacher's wages, made out by the trustees in pursuance of a vote of the inhabitants of the district.

By JOHN A. DIX, *September 20, 1833.* The trustees had no right to include in the rate bill a sum of money for the purpose of giving premiums to the scholars, whether directed so to do or not by the inhabitants of the district. The inhabitants of the district had no right to give such a direction or to lay a tax for the purpose. The objects for which a tax may be laid by the inhabitants of school districts are specified by law, and a tax cannot, therefore, be lawfully voted for any other purpose whatever.

The Commissioners of Common Schools of the town of Edmeston, *ex parte.*

The school fund of Edmeston must be applied exclusively for the benefit of the common schools of the town.

This was an application for the opinion of the Superintendent as to the propriety of applying the moneys derived from the Edmeston school fund for the indiscriminate benefit of all the children attending school in a joint district lying partly in the town of Edmeston and partly in the town of Plainfield, or whether it should be applied exclusively for the benefit of such children attending school in said joint district as resided within the town of Edmeston.

By JOHN A. DIX, *September 21, 1833.* The sixth section of the act of the 26th February, 1828, laws of N. Y. sess. 51, chap. 44, provides that the interest of the common school fund of the town of Edmeston "shall invariably be applied to the support, use and benefit of the common schools of the said town."

The 11th section of the same act provides in like manner that the interest of the common school fund aforesaid "shall be applied to the support of common schools therein," i. e. in the town of Edmeston, and shall be distributed in the same man-

ner as the public money appropriated for the support of common schools is now distributed by law.

The true interpretation of these provisions seems to be, that the interest of the fund referred to shall be applied exclusively to the use of the common schools in the town of Edmeston, and that it shall be distributed among these schools as the public money is distributed among them. Thus, it would be the duty of the commissioners of common schools of the town of Edmeston in the case of your district, part of which lies in Plainfield, to pay over to the trustees such a sum only as they would be entitled to receive upon an enumeration of the children between the ages of 5 and 16 years residing in the town of Edmeston; and the trustees would be bound, under the express provisions of the act above quoted, to apply it to the benefit of those children. Otherwise, it would be applied to the "support, use and benefit" of children in the town of Plainfield, which was clearly not intended. Independently of the express provisions of law, to which I have referred, it seems to me that on the score of justice such should be the application of the interest of the Edmeston school fund. In joint school districts, the public moneys are shared equally by all who attend school, and this is equitable, as each part furnishes its quota of public money, although the proportion, compared with the number of children in each part, may not always be exactly equal. But in this case the children attending school from Plainfield would have the benefit of the Edmeston school fund without furnishing any equivalent, unless it has also a common school fund. But if it has such a fund, I think the manifest intention of the law should prevail, and the proceeds of the fund of each town be applied exclusively to its own schools. As the matter stands, I consider it perfectly clear that the children of your district residing in Edmeston and attending school, should have the exclusive benefit of the sum, which your trustees receive from the commissioners of common schools as interest of the common school fund of that town.

The Trustees of school district No. 4 in the town of Cobleskill, *ex parte*.

When a new district is formed, the public moneys on hand in the old district should be equitably divided.

The facts of this case are fully stated in the Superintendent's decision.

By JOHN A. DIX, October 3, 1833. I have received affidavits in support of, and in opposition to, an application from school district No. 4 in the town of Cobleskill, for its proportion

of the school moneys apportioned, on the first Tuesday of April last, to district No. 8, from which the former was taken.

It appears that district No. 4 was formed by the commissioners on the 30th of March, and that the trustees of district No. 8 did not consent to the alteration, which was made in the latter district. The new district could not, therefore, go into operation, nor could the inhabitants thereof do any act with a view to its organization, until three months after notice in writing to some one or more of the trustees of No. 8. At the time the public moneys were apportioned by the commissioners of common schools, district No. 4 did not exist as an independent organization, and they would have been altogether inexcusable in recognizing it as such by allotting to it any portion of those moneys. They were right in the execution of their duty.

But district No. 4 having soon afterwards been organized, with the consent of the trustees of district No. 8, who admit that they gave their consent in order that the former might go into immediate operation, a new question is presented, which has a very material bearing upon the merits of the application. Is not the new district entitled to receive from No. 8 such proportion of the public money as it would have been entitled to, if its organization had been perfect on the day of the apportionment. There is no doubt on this subject, unless the public moneys have already been expended for the common benefit of both districts or appropriated by vote of the district to a previous term. On every ground of equity No. 4 is entitled to a just proportion of the public moneys, unexpended or unappropriated as aforesaid, in the hands of the trustees of district No. 8 at the time the former became a separate district. The public moneys are apportioned for the benefit of all the children in a school district, and if a portion of the children are, by an alteration of the bounds of the district, annexed to a new one, an equitable proportion of the public moneys on hand and unappropriated as before stated, must be paid over for their benefit to the trustees of the new district, to which they are transferred. This rule appears to me to be just and in accordance with the intention of the statute in relation to the common schools.

It will be proper, therefore, for the trustees of district No. 8, unless they have been otherwise instructed by a vote of the district, to pay to any qualified teacher, who has been employed in the district previous to its division, so much of the public money as shall be necessary to compensate him for his services. But if they had in their hands at the time district No. 4 went into operation, any public money not essential to that object, they must divide it between their own district and No. 4 according to the

number of children over 5 and under 16 years of age remaining in one and set off to the other.

The inhabitants of school district No. 7 in the town of Carlisle, *ex parte*.

Trustees cannot be compelled to pay interest on school moneys in their hands, nor can the inhabitants cause it to be taken out of their hands and loaned at interest.

This was an application from the inhabitants of school district No. 7 in the town of Carlisle, for the opinion of the Superintendent as to their right to require the trustees, by a vote at a district meeting, to loan at interest the public moneys received by them, until wanted to pay teachers' wages. He was also desired to state whether the trustees could be compelled to pay interest during the time those moneys remained unexpended in their hands.

By JOHN A. DIX, *October 16, 1833.* The statute places the public moneys belonging to school districts in the hands of the trustees, and gives to the inhabitants the power of dividing it into portions to be applied to particular seasons of the year. Beyond this the latter have no power to control it. The trustees must keep the money safely, and pay it out as authorized by the inhabitants, or as the law requires if the inhabitants give no direction in relation to it; but they cannot be made to pay interest on it, nor can the inhabitants direct it to be taken out of their hands and loaned at interest to any other person or persons.

The Trustees of school district No. 3 in the town of Chenango, *ex parte*.

A school-house cannot be sold under execution on a judgment against the trustees of the district.

George W. Drew, a teacher in school district No. 3 in the town of Chenango, commenced a suit before a justice of the peace against the trustees for the recovery of wages due him on a contract with their predecessors in office. No defence was interposed by the trustees, and judgment was rendered against them. Execution was issued, and the school-house, worth from \$1,200 to \$1,500, was advertised for sale by the sheriff, the amount of the judgment being somewhat more than \$30. The question submitted to the Superintendent was, whether the school house could be sold to satisfy the judgment against the trustees?

By JOHN A. DIX, *November 4, 1833.* No case like the one stated has come under the notice of my predecessor or myself.

But it seems to me to be clear, from an examination of the law, that a school-house cannot be sold under execution on a judgment obtained against the trustees of the district. Although they are invested with certain corporate capacities, they are not in law a corporation with general powers. Their liabilities would not therefore be such as to authorize district property in their custody to be sold under executions against them, without some special provision of law to that effect. Besides, the Revised Statutes, vol. 2, page 476, sec. 108, have made provision with regard to the collection of judgments against trustees of school districts, which are altogether inconsistent with such a proceeding. The trustees are made individually liable for judgments rendered against them, and the amount collected of them is to be allowed in their official accounts. If the sheriff goes on to sell, the sale will be void. The best mode of settling the controversy will be for the trustees to pay out of any moneys in their hands belonging to the district, the amount of the judgment. If their predecessors have misapplied, or have failed to account for the moneys which came into their possession while in office, they should be prosecuted by the present trustees, under sections 100, 101 and 102, 1 R. S. page 486.

The Trustees of school district No. 35 in the town of Manlius, *ex parte*.

Purchases of land subsequent to the formation of a new district do not affect its boundaries.

In the spring of 1833, school district No. 12 in the town of Manlius was divided, and district No. 35 formed by setting off a part of the former. A. B. owned and occupied a farm, which by the division remained in No. 12; but immediately after the division he purchased a farm lying in No. 35, and annexed it to the farm he occupied, which was adjacent to it. The question submitted to the Superintendent was, whether the farm so purchased in No. 35 was liable to be taxed in that district for a school-house, or whether by annexing it to his own farm in No. 12 it formed a part of the farm, so as to become taxable in the latter district.

By JOHN A. DIX, November 4, 1833. The farm purchased by A. B. in school district No. 35, Manlius, must be taxed in that district. If he had purchased it previous to the division of school district No. 12, and annexed it to his home farm, the case would be somewhat different. But as the matter stands, it seems to me that there can be no doubt about it. The farm was a part of district No. 35 when he purchased it. He cannot by purchasing and annexing it to a contiguous farm in another

district, release it from its pre-existing liability to taxation in the district of which it was a part at the time of the purchase.*

Robert Platt and others, *against* the inhabitants of school district No. 8 in the town of Peru.

The clerk of a school district cannot designate a place for an annual meeting when it has been omitted at the previous annual meeting.

Two meetings being held at different places on the same day as an annual meeting, a new one will be ordered.

The facts of this case are stated in the Superintendent's decision.

By JOHN A. DIX, *November 4, 1833.* On examination of the appeal of certain inhabitants of school district No. 8 in the town of Peru, it appears that the annual meeting of the inhabitants of that district, on the 1st Monday of October, 1832, was adjourned to the 1st Monday of October, 1833, at 4 o'clock, P. M. without appointing the place of meeting as required by law. It also appears that for many years the annual meetings of the inhabitants have been uniformly held at the district school-house. On the 28th of Sept. last the district clerk gave notice of the annual meeting for the day specified, to be held, "at the store-house of widow Craig, Peru landing," in consequence of the unfinished state of a new school-house erected on the site of the old one. Notwithstanding this notice nine of the taxable inhabitants met at the new school-house, organized, and elected district officers, while another portion of them, fourteen in number, met at the place specified in the notice, and also elected officers for the district.

It is clear that the clerk of the district had no right to supply an omission in the proceedings of the previous annual meeting by appointing a place for holding the next. This duty is specially enjoined by law upon the inhabitants of the district, assembled at their annual meeting; and if neglected, the defect can only be supplied by meeting at the usual place, or by the interposition of the Superintendent of Common Schools, on application to him. If any place had been named by the clerk in his notice it should have been the usual place for holding the annual meetings; for this, if any, must have been intended by the inhabitants. The proper mode, therefore, of remedying the omission in this case was for the inhabitants to meet at the school-house, and if found in an unfit condition for holding the meeting, they should have adjourned, after organizing, to some other place. In this manner the intention of the last annual meeting would have been satisfied, though the requirements of the law

* See a case decided by A. C. Flagg, October 18, 1830, p. 69.

would not have been strictly fulfilled. The clerk of the district acted without authority in appointing a place for the meeting; for he is only authorized by law to give notice of time and place when appointed by the competent authority. Yet, if the inhabitants had assembled at the time and place specified in his notice; if there had been no surprize on the part of any, and no exception had been taken at the time, by objecting to the proceedings, or by refusing to attend the meeting; it might be a question whether the result should be disturbed by the Superintendent on appeal, even though the requirements of the law had not been fulfilled, with regard to a designation of the place of meeting by the inhabitants at their last annual meeting, and though their intention had not been satisfied by holding it at the usual place. But as two meetings have been held, and as exception has been taken to one of them by a formal appeal to him, the question now presented is, whether he can, upon reference to the provisions of the law, pronounce the proceedings of either to be valid. For the reasons already assigned, neither of the meetings appears to him to have been held with such conformity to the requirements of the law as to give validity to its proceedings. The one held at the school-house, (the usual place,) though held both without notice and in direct disregard of the notice given by the proper officer, might have been sustained if generally attended; but it was attended by a small number only, with surprize on the part of many, who attended the other meeting under the misdirection of the clerk. On the other hand, the meeting at the store-house of the widow Craig was held in pursuance of an unauthorized notice, so far as the designation of place is concerned. It was but partially attended, and with surprize on the part of some, who attended the meeting at the usual place, or at all events without their assent. Neither of these meetings can, therefore, be considered such a one as is contemplated by law.

If the annual meeting had been altogether neglected, the Superintendent would not, without strong reasons, interpose; and the trustees in office would, in pursuance of a rule already established, hold over another year. But in annulling the proceedings of the two meetings referred to, it seems proper that the choice of officers should be again submitted to the inhabitants of the district, and their preferences fairly ascertained.

It is therefore decided, that the proceedings of the two meetings of the inhabitants of school district No. 8 in Peru, held on the 1st Monday of October last, are void and of no effect; and it is ordered, that a special meeting of the inhabitants of said district be held on the fourth Monday of November instant, at the new school-house, at 4 o'clock in the afternoon of that day, for

the purpose of electing district officers, and for transacting any other business which may be brought before them. They will also appoint the time and place for holding the next annual meeting. The clerk of the district will give to the inhabitants such a notice of the meeting hereby appointed as is required by law when a special meeting is called by the trustees.

William Ross and others, *against* the inhabitants of school district No. 4 in the town of Mentz.

If at an annual meeting a reasonable time is not allowed to the inhabitants to assemble, a new meeting will be ordered.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *November 5, 1833.* On the seventh day of October ult. the inhabitants of school district No. 4 in the town of Mentz, held their annual meeting at the school-house in said district. The hour appointed at the previous annual meeting was four o'clock in the afternoon, and regular notice thereof was given by the clerk of the district. About twenty minutes past four, when eight of the taxable inhabitants were assembled, it was proposed to organize and proceed to business, as the weather was unpromising, and it was desirable to close the proceedings before it was dark. To this proposition objections were made by William Ross, who stated that much excitement prevailed in the district, and that there would undoubtedly be a general attendance of the inhabitants. He, therefore, urged that a reasonable time should be allowed for them to assemble. Notwithstanding these objections, the meeting proceeded to business, and when the trustees were chosen, only nine voters were present. Immediately after the election seven or eight more made their appearance, and before 5 o'clock 24 taxable inhabitants were present. Some of the latter, took part in subsequent proceedings, and a motion was made to reconsider the choice of officers, but the moderator refused to put the question to the meeting. Thus it appears, that the officers of the district have been chosen by nine persons, although by a delay of a few minutes the wishes of a large majority of all the taxable inhabitants might have been ascertained; and this in opposition to the remonstrance of one, if not more, of the voters present at the organization of the meeting, Although it was the duty of all the voters to attend punctually at the hour appointed; yet it seems to the Superintendent that the haste with which the choice was made, and the refusal of the persons who made it, to admit of any participation in it by those who arrived subsequently and expressed a wish to vote, evince a disposition to take an undue

advantage of their neighbors, who were equally interested with themselves in the prosperity of the district. At all events the wishes of the district have not been expressed; and he feels satisfied that the district officers, thus chosen by a small minority of the inhabitants, will, on reflection, see, as he does, the propriety of submitting their claims to the clearly expressed will of the majority.

It is, therefore, ordered, that the choice of district officers made at the annual meeting of the inhabitants of district No. 4 in the town of Mentz aforesaid, on the 7th day of Oct. ult. be, and it is hereby set aside. And it is further ordered, that a special meeting of the inhabitants of said district be held on the fourth Monday of November instant, at the school-house in said district, at 6 o'clock in the afternoon, for the purpose of choosing district officers, and for the transaction of any other business which may come before it. The clerk of the district will give the inhabitants such a notice of the meeting hereby appointed, as is required when a special meeting is called by the trustees of a school district.

J. C. Van Buskirk and others, *against* the inhabitants of school district No. 1 in the town of Aurelius.

Sites for school-houses should not be fixed without a fair expression of the opinions and wishes of the inhabitants.

If the title to the site of a school-house fails, the inhabitants may select another precisely as though the district had never possessed one.

The toll-house and lot of a bridge company are not taxable as real estate.

The facts of this case are fully stated in the Superintendent's order.

By JOHN A. DIX, *November 6, 1833.* On the 7th of October ult. the inhabitants of school district No. 1 in the town of Aurelius, Cayuga county, held their annual meeting in pursuance of adjournment and public notice as required by law, seven voters being present. After the election of district officers the meeting proceeded to vote a new site for a school-house, the building used for that purpose having been consumed by fire, and the title to the former site having, as is alleged, proved defective. It was then resolved to build a new school-house, a tax of two hundred and fifty dollars was voted for the purpose, the dimensions of the building were prescribed, and the meeting was adjourned to the 9th of the same month.

To the proceedings of this meeting it is objected: That the vote given for changing the site of the school-house was in violation of the provisions of the Revised Statutes, vol. 1. page 479, sec. 66.

By reference to the act of Feb. 17, 1831, sec. 6, (laws of

N. Y. sess. 54, chap. 44,) it will be perceived that the provisions of the section above referred to are repealed, although they are re-enacted, with modifications, in the preceding sections of that act.

The intention of the act of 1831, is, that the site of the school-house when it is once procured and fixed, and the house has been built or purchased, shall not be changed, excepting in the mode therein prescribed. But if a site has never been procured, none of the provisions of the act apply. It may be selected at any meeting of the inhabitants of the district, without such a special notice as is required by the 3rd section of the act of 1831. In like manner, if a site has been established and the title to it fails, the same principle must apply. The district is absolutely without a site. The site is not to be changed, but it is to be chosen, precisely as though the district had never possessed one. To such a case it is manifest that the provisions of the act of 1831 cannot be applicable. It could never have been intended that the commissioners of common schools should, when the necessity of the case is inevitable, be required to consent to the change or state it to be necessary; nor could it have been intended that a vote of two-thirds of the persons present at a special meeting called for the purpose and qualified to vote therein, should be required to select a site when the district is without any, or even to remove the school-house, when the title to the ground has failed. The provisions of the act of 1831 being intended for a particular case, none of them are to be considered applicable where the case in point has not occurred.

It has been shown to the Superintendent of common schools by the affidavit of five persons, that the land on which the school-house of district No. 1, recently consumed by fire, stood, is "now owned by Henry Hopper, and that the school district have no title or claim to the land on which the said school-house was situated, by lease, deed, or otherwise." The district cannot therefore be considered as having such a site for a school-house as is contemplated by law, and the provisions of the act of 1831 before referred to are wholly inapplicable to the case. The inhabitants of the district at any meeting when they are legally assembled, whether the notice for the meeting states a special purpose or not, may, by a majority of votes, select a site and lay a tax for purchasing it. If, however, there has been surprise on the part of any of the inhabitants, or if there is reason to believe that the sense of the majority has not been fairly expressed, it is in the discretion of the Superintendent of Common Schools, on appeal to him, to set aside the proceedings complained of, and order the question to be submitted anew to the district.

It appears by the testimony of the applicants in this case, and by the admission of the appellees, that there were but seven persons present at the annual meeting on the 7th October, although as is stated by the former, the number of taxable inhabitants belonging to the district is between thirty-five and forty-five. The omission of voters to attend district meetings, where the legal notice has been regularly given, constitutes no just ground in ordinary cases for vacating the proceedings of such meetings. If the parties concerned will not attend, they have no right to complain that their business, through their own inattention, has been transacted by others, however small the number of persons who have disposed of it. The Superintendent will not, therefore, disturb any portion of the proceedings of the annual meeting which relates to business ordinarily transacted at such meetings, such as the choice of district officers. But he deems it due to the quietude, if not to the permanent prosperity, of the district, that the choice of a site for a school-house should be again submitted to the inhabitants. The position of the school-house is a matter of interest to the whole district, more especially as a change in the site, when it has been once permanently fixed, is embarrassed by great difficulties; and it is due to all concerned that full opportunity should be given for making a fair and deliberate choice. The Superintendent would consider it unjustifiable on the score of equity alone, without reference to its bearing upon the tranquillity of the district, to allow a question of this magnitude to be settled by a majority of seven persons, when at least thirty more have an equal interest in it.

There are several minor objections to the proceedings of the meeting, which it is unnecessary, for the purposes of this decision, to notice.

To the assessment made by the trustees of the taxes voted for building a school-house and purchasing a site, it is objected that the Cayuga Bridge Company has been taxed \$41.90 upon its property, valued at \$7,000, in school district No. 1.

On referring to the act of incorporation, and the several acts amending it, it appears that the Cayuga Bridge Company were authorized to construct a bridge "over the Cayuga Lake on the outlet thereof," and also to erect a permanent bridge across the Cayuga Lake between the villages of East and West Cayuga, in addition to their bridge built over the outlet of said lake.

These bridges are both in use. The tolls of one are collected in Aurelius within the bounds of school district No. 1, and the tolls of the other are collected in the town of Seneca Falls.

The Revised Statutes, vol. 1, page 390, section 6, provide that "when the tolls of any bridge, turnpike, or canal company are collected in several towns or wards, the company shall be as-

sessed in the town or ward in which the treasurer or other officer authorized to pay the last preceding dividend, resides." This provision, however, does not include the real estate of the company. For it is provided at the beginning of the section that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall be, in the same manner as the real estate of individuals."

The affidavit of John C. Van Buskirk sets forth that "the treasurer of the" Cayuga Bridge "Company, authorized to pay the last dividend, resides at Seneca Falls in Seneca county." The personal property of the company therefore, and the amount of its capital, exclusive of its real estate lying in other towns, is taxable in the town of Seneca Falls, although the value of the bridge terminating in Aurelius be included in that amount.

However inequitable the operation of the rule in this instance may be, it is clearly a case within the provisions of the Revised Statutes above quoted. The property of the company, exclusive of its real estate in other towns, must be taxed in the town of Seneca Falls. It only remains then to be considered whether the company has any property in district No. 1, which comes within the definition of real estate. If it has nothing more than a house for the use of the toll gatherer, and a lot no more than sufficient for his accommodation, I am of opinion that they are to be considered, like the toll-house and gate of a turnpike company, as a necessary appendage to the franchise, almost equally indispensable to its enjoyment with the bridge itself. The affidavit of John C. Van Buskirk puts the value of the house and lot at \$200 or \$250, according to the ordinary standard of valuation adopted by the assessors of the town, an amount so small that it would be hardly reasonable to treat it as representing real estate distinct from the capital stock of the company. Upon a full view of the case, therefore, I think the property of the Cayuga Bridge Company is not liable to be taxed at all in the town of Aurelius.

As upon these points the whole case may be disposed of, it is unnecessary to take notice of the remaining objections to the proceedings of the two meetings from which the appeal under examination is brought.

It is accordingly ordered, that the proceedings of the two meetings in school district No. 1, Aurelius, held on the 7th and 9th October ult., excepting so far as they relate to the choice of district officers, be and they are hereby annulled; and it is further ordered, that all subsequent proceedings by virtue of the votes taken at said meetings for selecting a site for a school-house, for laying a tax for the purchase of said site, and for laying a tax for building a school-house, be, and they are hereby set aside.

And the trustees of said district are hereby required to call a special meeting of the inhabitants at an early day, for the purpose of announcing this decision, and of giving them the opportunity of taking such measures in the premises as upon reconsideration may appear to them to be due to the quietude and prosperity of the district.

The inhabitants of school district No. 14 in the town of Richland, *against* the Commissioners of Common Schools of said town.

School districts should not be so reduced in strength as to be unable to maintain respectable schools.

Dissensions in school districts cannot be allowed to be made a ground for altering or breaking them up.

This was an appeal to the Superintendent under circumstances which are fully stated in his decision.

By JOHN A. DIX, *November 11, 1833.* On the 31st day of August last, the commissioners of common schools of the town of Richland, Oswego county, formed a new district of a part of district No. 14 and other contiguous territory. From this proceeding, the inhabitants of the latter appeal to the Superintendent of Common Schools.

District No. 14, before it was divided by the commissioners, had 40 children between the ages of 5 and 16 years, and a taxable property amounting to \$4,370. By the alteration referred to, the number of children is reduced to 29, and the taxable property to \$3,250. The Superintendent is decidedly of the opinion that the district, with such a reduction of its wealth and of the children upon whom the public money is apportioned, would hardly be adequate to the support of such a school as is indispensable to the proper education of their children. It is the great evil of the common school system that the teachers are not always so well qualified as they should be. It is obvious that their qualifications will generally be in proportion to their compensation; and it is an object of the highest importance to secure to every district the ability of maintaining a respectable school, by employing a teacher of the requisite learning and ability. By preserving the district as it existed previous to the division made by the commissioners, some of the inhabitants may be compelled to send a greater distance to school, and they may even be unable to send at all during some days in winter by reason of the state of the roads. But admitting all this to be true, the evil will be far less than that of reducing the strength of district No. 14 so much as to disable it for maintaining a respectable school. The Superintendent has no means of knowing the situ-

ation of the inhabitants who were taken to form district No. 22, excepting those who were set off from district No. 14. But he cannot consistently with what he deems due to the latter, sanction the alteration made by the commissioners.

It is alleged that a personal difficulty has existed between some of the inhabitants of district No. 14, and that the district has thereby been kept in a perpetual ferment for sometime past. Although these dissensions are exceedingly to be regretted when they are allowed to influence the conduct of individuals in relation to the education of their children, it would be extremely dangerous to allow them to be made a ground for altering or breaking up school districts. It is far better to trust to the good sense and sober reflection of the parties concerned, and to believe that they will, ere long, in a matter so deeply affecting the character and interest of their children, come together under the guidance of more rational counsels, and sacrifice their private animosities to considerations of their own, as well as the common good. They cannot fail to see that without a spirit of moderation and forbearance the good order of society could not long be maintained, and that the benefits it is designed to secure could not be enjoyed in comfort or safety.

It is hereby ordered, that the proceedings of the commissioners of common schools of Richland, in the formation of school district No. 22, be set aside, and that the said district be, and it is hereby, annulled.

The Trustees of school district No. 8 in the town of Cobleskill, *ex parte*.

Public moneys are to be equitably divided when a new district is formed.

The facts of this case are the same as stated in the Superintendent's opinion on the application of the trustees of school district No. 4 in the town of Cobleskill, page 125.

By JOHN A. DIX, November 12, 1833. By a rule heretofore established by the Superintendent of Common Schools, whenever a new school district is formed after the public moneys are distributed, the inhabitants who are taken to constitute it, are entitled to receive from the districts from which they are set off, their just proportion of the school moneys apportioned to said districts, according to the number of their children between 5 and 16 years of age. Although this division of the public moneys is not made obligatory by law, it is in accordance with the whole tenor of its provisions, and a different rule could not be set up without manifest injustice and an entire abandonment of the principle upon which the proceeds of the common school fund are distributed. The right to receive the school money as above

stated may be waived by the parties concerned, but it cannot be taken away without their consent. You will understand me as referring only to such portion of the public moneys in the hands of the trustees as is unexpended or unappropriated by vote of the inhabitants to a term preceding the division of the district.

The new district (No. 4,) will, therefore, be entitled to receive from you \$4.34, unless some portion of the school money, which you received, was appropriated to the payment of a qualified teacher for his services after the first of January last, and before the division of your district.

The inhabitants of school district No. — in the town of Petersburg, *ex parte*.

School may be kept on Sunday for the benefit of persons who observe Saturday as holy time, and the teacher must be paid for that day by those who send to school.

A teacher may receive the public money if he dismisses his school on Saturday and keeps it open on Sunday.

This was an application to the Superintendent for his direction in a case in which a large majority of the inhabitants of the district observed Saturday as holy time, and the teacher being of the same religious sect, kept his school open on Sunday and dismissed it on Saturday.

By JOHN A. DIX, *November 18, 1833.* The laws of this state recognize Sunday as a day of public observance, by prohibiting the execution of civil process, pastimes, &c., and travelling, excepting for necessary or charitable purposes. Servile labor is also interdicted, excepting to those who uniformly keep the last day of the week (Saturday) as holy time. Such persons may undoubtedly have a school on Sunday, provided it is kept under such circumstances as not to disturb other persons in their observance of the first day of the week (Sunday) as holy time; but they cannot under the provisions of the law, compel the latter to contribute in any manner to its support. If a teacher keeps his school open on Sunday, those whose children attend pay him for that day; but if he teaches from Monday morning till Friday night, he ought not to be deprived of the public money because he teaches on Sunday also. This is altogether too unimportant a matter either for the interposition of the Superintendent, or for any contention among yourselves. The teacher would be entitled to the public money for five days in the week, and as the inhabitants pay towards the balance of his wages, after applying the public money, for so much time only as their children attend school, it seems to me that there is no hardship or injustice in the matter.

(ANONYMOUS.)

On certain holidays schools may be dismissed.

By JOHN A. DIX, *November 21, 1833.* The holidays on which a teacher may dismiss his school, are such as it is customary to observe throughout the country: as the fourth of July, Thanksgiving and New-Year. But these matters are not, it seems to me, of sufficient importance to give rise to any controversy between the trustees and teacher, by insisting on either side with too much tenacity upon any particular day beyond those above mentioned. If it were usual, for instance, in the neighborhood, to dismiss school to enable the children to attend some local celebration, a proper liberality should be exercised towards the teacher in that respect.

The inhabitants of school district No. 1 in the town of Hunter, *against* the Trustees of said district.

Coloured persons, ought not to be employed to teach white children.

This was an appeal by some of the inhabitants of school district No. 1 in the town of Hunter, from the proceedings of the trustees of said district, in employing a coloured man to teach the district school, which was attended almost exclusively by white children.

By JOHN A. DIX, *November 25, 1833.* The law is silent as to the description of persons to be employed as teachers, and it is, therefore, a matter wholly in the discretion of the trustees. At the same time I consider the employment of a coloured person to teach a school of white children as an unjustifiable exercise of authority, unless the parties concerned waive their objections to it. It is unnecessary to inquire whether public opinion, with regard to the admission of these persons to the enjoyment of all the social privileges of the whites, is well grounded or not. It is enough that a distinction exists; that they are disqualified by the laws of the United States for the performance of services in the militia, and by the constitution of this state for the exercise of the right of suffrage, without a qualification of property.

Under these circumstances the trustees of school districts, whose duty it is to cultivate a spirit of harmony and good feeling, by carrying into effect as far as is proper the wishes of the inhabitants, should abstain from employing them in the capacity of teachers. If the trustees persist however, notwithstanding the objections on the part of the inhabitants, I see no remedy for it, until the annual election of district officers occurs, when others may be elected in their place. They may pay the teacher the public money for his wages as far as it goes, and the residue must

be collected from those who send to school. No inhabitant can of course be compelled to send his children.

The Clerk of school district No. 9 in the town of Penfield, *ex parte*.

Rule of taxation in relation to real estate purchased after the formation of a school district applied to certain cases.

By JOHN A. DIX, *November 25, 1833*. I have received your letter of the 12th inst. containing certain queries, which are herewith subjoined, together with the answers required.

1st. "Since the last alteration in our district lines a person living in another district purchased a small farm, about 40 acres, adjacent to our district line, having thereon a log house, in which no one now resides: he afterwards purchased a small farm not far from the same size, adjoining said 40 acres on our side of the line, which had on it a frame barn and log house, which is also without an occupant, all of which he cultivates by his own and hired labor, and the whole of the land being only contracted to the original settlers has been since conveyed to the present purchaser in one deed. Query. Where is that part of said land which lies in No. 9 taxable? in number 9, (our district,) or in number 12, (the residence of the owner?)"

Answer. That part of the land which lies in No. 9 is taxable in that district. The rule has long been established by the Superintendent of Common Schools that the lines of school districts, when once fixed, cannot be altered by subsequent purchases.

2d. "The owner of a farm in another district adjoining our district line purchased a farm of 100 acres in our district adjoining his farm, then sold the buildings and about half the land, retaining that part adjoining his own and working it as a part of his farm: are said lands still taxable in our district?"

Answer. This question is also answered by the principle above referred to, in my answer to query No. 1, if, as stated in the postscript in your letter, the purchase was made after the organization of your school district.

3d. "A piece of land, say 20 acres, in our district, adjoining the district line and cornering on a farm out of this district, was purchased and is now occupied by the owner of said farm, living in another district: where is said 20 acre piece to be taxed?"

Answer. This land, like the lots referred to in the two preceding queries, is taxable in your district, if, as is stated in the postscript of your letter with regard to this also, the purchase was made after the formation of the district. The object of the rule, which applies equally to all these cases, and which is considered not inconsistent with the provisions of the statute, was to prevent

small districts from being broken up by those changes which are constantly occurring in the ownership of real estate.

The Trustees of school district No. 6 in the town of Lincklaen, *ex parte*.

A certificate of qualification signed by two inspectors is good, if there are only two persons in the town authorized to act as such.

This was a case in which two of the commissioners of common schools of the town of Lincklaen had removed out of town, and two of the inspectors were engaged in another town in keeping school, so that there were in the town but two persons who were authorized to inspect teachers. The question submitted was whether a certificate signed by them was a sufficient compliance with the law.

By JOHN A. DIX, *December 11, 1833*. A teacher's certificate should be signed by three inspectors. But where there are only two individuals in the town authorized to act as such, their certificate as to his qualifications must, from the necessity of the case, be deemed sufficient, and he will be considered to all intents a qualified teacher.

John Oakley, a Trustee of school district No. 12 in the town of Schroon, *ex parte*.

The time and place for the annual meeting not having been fixed, it may be held at the usual time and place.

Trustees may give notice of a meeting when the clerk refuses to do so.

John Oakley was elected clerk of school district No. 12, in the town of Schroon, at the annual meeting for the year 1832; when by mistake the time and place for the next annual meeting were not appointed. As the usual time approached, the trustees directed Mr. Oakley to give the customary notices, which he declined to do, on the ground that a special meeting was necessary in consequence of the omission of the inhabitants, at their last annual meeting, to designate the time and place for the next. The trustees then put up notices themselves for an annual meeting, and it was held at the usual time and place, and Mr. Oakley, contrary to his earnest remonstrances, was elected a trustee. The opinion of the Superintendent, as to the legality of the proceedings referred to, was solicited.

By JOHN A. DIX, *December 12, 1833*. If at an annual meeting of the inhabitants of a school district, the time and place for holding the next are not fixed, and if at the expiration of the year for which the district officers were elected, a meeting is held and an election had at the usual time and place, the Super-

intendent has always treated the proceedings as valid, notwithstanding the want of formality in the adjournment at the previous annual meeting. There should, however, be no surprise on the part of the inhabitants: otherwise he would, on application, set aside the proceedings and afford the necessary relief by ordering a new election. Although the law does not expressly provide that the trustees of a school district may give notice of a meeting when the clerk refuses, yet I think this one of those cases, in which they may act with propriety. The law does not, of course, suppose that the clerk will refuse to act, even though the cause should be a doubt as to the propriety of acting in a given case. In strictness the trustees should have given the clerk a written direction to issue notices for the meeting, but the law does not make a written order necessary, and so far as the clerk is concerned, he would have been justifiable in acting and giving a written notice upon the verbal order, which he received. Upon the whole, although Mr. Oakley may appeal, and if he should do so I shall investigate the case and decide it upon the proof, as strict justice may require, yet as there is no special grievance or injury, I think he had better acquiesce in the proceedings. He may not be very much benefited by the trust to which his neighbors have elected him, and perhaps the discharge of his duties may give him some small inconvenience; but these trifling sacrifices should be met in a spirit of accommodation; and certainly an election to an office which enters so much into the interests of one's neighbors, is a mark of confidence, however little it may be appreciated, for which the individual thus complimented has no right to take offence. I think Mr. Oakley had better offset the compliment to the grievance and let the matter rest.

The Trustees of school district No. 7 in the town of Lexington, *ex parte*.

A trustee of a school district cannot be clerk or collector.

The officers of clerk and collector may be held by the same person, although the intention of the law would be better answered by conferring them on different individuals.

A person exempt from a tax by reason of performing military services, may vote at school district meetings notwithstanding such exemption, if the payment of the tax would have given him a right to vote.

A distinct possession carries with it a liability to taxation.

A school-house being abandoned, and the right of occupancy failing with it, a new site may be chosen by a majority of votes.

This was an application to the Superintendent for his opinion as to several questions, the subject matter of which will be apparent from the answers.

By JOHN A. DIX, *December 30, 1833*. A trustee of a school district cannot be clerk or collector. The law does not in ex-

press terms disqualify a trustee for holding either of those offices; yet it is manifest from the nature of the duties annexed to them that they must be held by different persons. The same objection does not apply to the offices of clerk and collector, which may be held by the same person;* but at the same time as the law has created separate offices, it is better to carry out its intention strictly by conferring them on different individuals.

If a person is exempted from the payment of a tax by reason of having performed certain military duties, he is not to be deemed disqualified thereby for the exercise of any right which the payment of the tax would have secured to him. He is to be considered as having paid it in another mode, the exemption being in fact the price of other services rendered by him.

If a man has a farm lying in two school districts, and has several tenants, paying him a specific rent, residing on different parts of it, the tenants must be taxed in the districts in which they reside respectively, for so much as is possessed by them. Whether the owner pays the tax to the town on the whole, or not, is of no consequence. A distinct possession carries with it a liability to taxation for school district purposes in the district in which the part separately possessed lies. It is, for all such purposes, to be deemed a distinct farm.

If a school-house becomes unfit for use, and is abandoned, and the right to the site determines with such abandonment of the building, the district is to be regarded as destitute of a site, and a new one may be designated by a majority of votes.

The Trustees of school district No. 4 in the town of Butternuts, *ex parte*.

Warrants annexed to tax-lists and rate-bills, are to be executed in the same manner as warrants issued to the collectors of towns.

Any goods and chattels lawfully in possession of a person assessed to pay a tax, may be taken by the collector of a school district.

This was an application to the Superintendent for his construction of the laws referred to in his answer.

By JOHN A. DIX, *December* 30, 1833. All warrants, whether issued for the collection of school bills or taxes are to be made out in the same manner as is provided by section 2, of the act of April 21, 1831, and by the act of April 26, 1832, they have the same effect.

Property exempt from taxation under the general law is ex-

* The supreme court in the case of *Howland vs. Luce*, 16 Johnson, 135, held that there was no prohibition in the common school act "to confer the offices of district collector and clerk on the same person," and that there was "no incompatibility in the offices."

empt from taxation for common school purposes; but any goods or chattels lawfully in the possession of the person on whom a tax is assessed, may be taken by distress and sold for non-payment of the tax under a warrant issued for its collection, although the person be not the owner of the goods or chattels. There is no distinction as to extent and effect between a warrant issued by the supervisors of a county to a collector of a town and a warrant issued by the trustees of a school district to the collector of the district.*

The Commissioners of Common Schools of the town of Fishkill, *ex parte*.

In appraising the school-house and property of a district lying partly in two towns the commissioners of both must unite.

The apportionment of the value of the school-house and other property of a district need not be filed with the town clerk in order to give validity to the proceedings.

This was an application for the opinion of the Superintendent in relation to two enquiries, the subject matter of which is explained by his answer.

By JOHN A. DIX, *January 2, 1833*. If a joint district is divided for the formation of a new district, the commissioners of both towns should appraise the property; or if a new district is formed from districts lying in two or more towns, a majority of the commissioners of all the towns must appraise the property of the districts affected by the alterations made. The act relating to common schools, sections 67 and 68, requires that the value of the property shall be ascertained "at the time," &c. by the commissioners. The formation of the new district, the appraisalment, &c. constitute one proceeding, and all the persons, to whom authority is given to perform the acts referred to, must unite in them.

It is not indispensable to the validity of the appraisalment, that the apportionment of the value of the property should be filed with the town clerk. It must be handed to the trustees of the districts affected by the proceedings of the commissioners, and the latter ought also to make their clerk put it on record. But their omission to do so will not render the proceeding void.

* The principle of this decision was settled by the supreme court in the case of Keeler and others vs. Chichester, 13 Wendell, 629, pronounced in the year 1835. The court held that "any property found in the possession of the person liable to pay the tax, might be taken and applied to the payment of such tax" by a town collector, and that the collector of a school district "was clothed with the same powers as the collectors of towns in collecting town and county taxes."

(ANONYMOUS.)

A teacher may employ necessary means of correction to maintain order; but he should not dismiss a scholar from school without consultation with the trustees.

By JOHN A. DIX, *January 2, 1834.* A teacher must, for the purpose of maintaining proper order and discipline in his school, have a right to employ such means of correction as he may deem necessary to the accomplishment of the object. For any unnecessary or excessive severity he would be answerable in damages in a suit at law to the person aggrieved.

A teacher ought not, I think, to dismiss a scholar from school. From the nature of the common school system, teachers are, as a general rule, bound to receive and instruct all children sent to them. If a scholar is so refractory that he cannot be managed, and his dismissal becomes necessary to the preservation of order, I think the teacher should lay the matter before the trustees for their direction: but not until the ordinary means of correction had been fully tried and found unavailing.

The Inspectors of Common Schools of the town of Moravia, *ex parte.*

In districts lying partly in two or more towns the inspectors of either town may give a certificate to a teacher, and the inspectors of any one of the other towns may annul it.

In districts lying wholly in one town, three inspectors may give a certificate and the other three may annul it.

This was an application for the opinion of the Superintendent in a case, where the inspectors of one town had certified to the qualifications of a teacher in a district lying partly in that town and one adjoining, and the inspectors of the latter soon afterwards annulled the certificate.

By JOHN A. DIX, *January 3, 1834.* The certificate of the inspectors of one town as to the qualifications of a teacher of a school in a joint district is good; and the inspectors of any other town, of which the district forms a part, may annul it. I cannot, under the terms of the act relating to common schools, bring my mind to any other conclusion.

In districts lying wholly in one town, three inspectors (under this name I include the commissioners) may give a certificate, and three may revoke it, or three may renew a certificate when it has been revoked, although they may not be the same persons in these several cases.

Collisions, I am aware, may arise under this construction of the law between the inspectors. But such collisions will not be presumed; and if they do occur, they must be put at rest, like

all other controversies arising under the act relating to common schools, by an appeal to the Superintendent.*

(ANONYMOUS.)

An omission to record an alteration in a school district does not render the proceeding void.

By JOHN A. DIX, *January 13, 1834.* An omission to put on record an alteration in the bounds of a school district does not affect the validity of the proceeding, but the defect may be supplied at a subsequent day by recording the order of the commissioners.

(ANONYMOUS.)

Commissioners of common schools are, to all intents, inspectors.

By JOHN A. DIX, *January 13, 1834.* Commissioners of common schools are, by virtue of their office, inspectors of common schools. There is no distinction whatever between them and the persons elected as inspectors, so far as the visitation and inspection of schools and the examination of teachers are concerned. They are all inspectors, as strictly so as if they had all been elected by that name; and their rights and powers as such are, of course, the same.

The Trustees of school district No. — in the town of Sing-Sing, *ex parte.*

If a district has had no clerk or record for two years, it is not for that reason dissolved.

An election need not be held in the day time.

This was an application for the opinion of the Superintendent as to the effect of an omission on the part of the inhabitants of a district for two successive years to choose a clerk, in consequence of which neglect no records or minutes of proceedings had been kept. He was also desired to state whether an election of district officers could be held except in the day time.

By JOHN A. DIX, *January 13, 1834.* If a district has had no clerk, and no minutes have been kept for two years, it is a gross irregularity; but it is, nevertheless, not to be considered as working a dissolution of the district. The true remedy is to elect a clerk and proceed regularly for the future.

It is not necessary that an election of officers for a school district should be held in the day time.

* See the case submitted by the inspectors of common schools of the town of Ballston, page 33.

Caleb N. Potter and others, against the Commissioners of Common Schools of the town of Skaneateles, and the Trustees of joint school district No. 4 in Marcellus and Skaneateles.

An inhabitant being set off from a school district, it is an altered district, and the site of the school-house may be changed by a majority of votes.

An alien cannot be an officer of a school district.

Commissioners should not fill a vacancy in an office in a school district, unless the district neglects to fill it for one month after knowing that it has occurred.

Vacancies in district offices, when the district lies in more than one town, must be filled by the commissioners of both towns.

The facts connected with this appeal, are stated in the decision of the Superintendent.

By JOHN A. DIX, *January 31, 1834.* On examination of the appeal of Caleb N. Potter and others, from various proceedings of the commissioners of common schools of the town of Skaneateles, and of the trustees of school district No. 14 in Marcellus and Skaneateles, to which said appellants belong, it appears :

1st. That the inhabitants of said district in January or February, 1833, by a majority of votes altered the site of the school-house.

The legality of this proceeding, which is objected to by the appellants as unauthorized and void under the act of 17th February, 1831, depends wholly upon the fact whether the district has been altered since the school-house was built or purchased, for if it has been, a change of the site by a majority of votes is valid, without the consent of the commissioners of common schools.

It appears by the old record of the town of Marcellus in the office of the town clerk of Skaneateles, that Zail Conover was taken from district No. 13, Skaneateles, on the 12th of March, 1830, and annexed to district No. 14. The existence of this record is admitted by the appellants. The persons who were trustees of district No. 14 at that time, swear that they were notified of the alteration and consented to the same, and the consent of the trustees of district No. 13 is a part of the record referred to. The admission on the part of the appellants taken in connexion with the testimony of the trustees, is conclusive against the appellants on the first point. It is alleged, it is true, that the order making the alteration does not appear in the office of the town clerk of Marcellus; but the old record of the town shows that it was recorded at the proper time; and if the record was transferred to the town of Skaneateles, it was not necessary that the order should be recorded in Marcellus after its organization as a new town. The fact that it was recorded in the old town, a fact admitted by the appellants, is sufficient evidence of its having been regularly made by the commissioners of common schools.

The right of the commissioners of common schools of Marcellus to make the alteration, was perfect. The act of February 26, 1830, organizing the town of Skaneateles, provided that the first town meeting in the town of Marcellus, after its division, should be held on the last Tuesday of April, 1830, and that the first town meeting in the town of Skaneateles should be held on the same day.

The Revised Statutes, vol. 1, page 157, sec. 12, provide that every law, unless a different time shall be designated therein, shall commence and take effect on the twentieth day after its passage. The act of the 26th February, 1830, referred to, is silent as to the time when it was to go into operation, and it would, therefore, take effect on the 18th of March. For some purposes Skaneateles would be considered a separate town on that day: but it may be fairly contended that the local authorities of the town of Marcellus might exercise jurisdiction over both towns until new officers were chosen for both. Otherwise it is manifest that no competent authority would exist in the former town during the period intervening the time at which the law erecting it went into effect, and the day appointed for the town meeting, to provide for the execution of the laws. But even if the authority of the commissioners of Marcellus over the common schools in Skaneateles ceased on the day the act erecting the latter took effect, they were competent to act until the 18th, and, therefore, the alteration referred to on the 12th was valid and went into operation immediately, the trustees of the districts having given their consent.

A legal alteration in the boundaries of district No. 14 having thus been made after the school-house was built, the provisions of the act of February 17, 1831, are inapplicable to the case.

2d. It is objected by the appellants, that Merick Bradley and Henry Ellery, two of the trustees of said district, (Benjamin Nye, the third trustee, dissenting,) sold the school-house on the ninth November last, pursuant to a vote of the inhabitants on the 7th of October.

No testimony is produced to show that the proceedings of the meeting at which the vote to sell the school-house was taken, were irregular or void, and it is clearly shown that public notice of the sale was given, though such notice is not required by law.

It is objected, however, that Ellery, being an alien, was incapable of holding office, that his acts were void, and as a necessary consequence that the sale by Bradley against the consent of Nye, was not valid. Whether Ellery was incapable of holding office or not, is of no consequence so far as the validity of his acts is concerned. It is sufficient that he was elected a

trustee at a regular meeting of the district. He was an officer *de facto*, and his acts, so far as the public and third persons having an interest in them are concerned, were good, until his incapacity to hold office was determined, and a new election ordered by some competent authority. The sale of the school-house by Bradley and Ellery, in pursuance of the vote of the meeting was, therefore, valid.

With regard to the eligibility of Ellery to hold the office of trustee, the Superintendent concurs with the commissioners in the opinion expressed by them, although the question is not without difficulty. It is provided by the Revised Statutes, vol. 1, p. 721, sec. 20, that "every alien who shall hold any real estate, by virtue of any of the foregoing provisions, shall be subject to duties, assessments, taxes and burthens as if he were a citizen of this state; but shall be incapable of voting at any election, or of being elected or appointed to any office, or of serving on any jury." The provisions of this section relate to aliens, who, under certain circumstances, are authorized to hold real estate, and they have in several instances been construed with very considerable limitation of their terms. Although the persons embraced by it are "subject to duties, assessments, taxes and burthens" as if they were citizens of this state, it has been decided by the proper military authority, that they cannot be lawfully enrolled in the militia, because the law prescribing the organization of the militia does not include them in the class designated as subject to military duty. Military service is a "duty" as well as a "burthen;" yet the general provisions of the section above quoted have been so construed as not to conflict with the special provisions of law regulating the enrolment and organization of the militia. In like manner it has been decided by the Superintendent, that aliens may vote for school district officers, notwithstanding the general terms of the section above quoted, because the chapter relating to common schools prescribes the qualifications of voters, and does not in terms exclude aliens; and because it was conceived that the statute, in referring generally to elections, must be construed to intend such as are provided for in the case of state, county or town officers, and not to include jurisdictions merely local and organized for special purposes. If the chapter relating to common schools had expressly declared what the qualifications of the officers of school districts should be, the question might arise whether the same rule of construction should not be adopted with regard to the general provision in the section above quoted, as to the capacity of the persons referred to in it, to hold office by limiting it to such "public or civil offices" as are provided by the Revised Statutes. But as the chapter relating to common schools is wholly silent with regard to the qualifications

of school district officers, it would be assuming too broad a construction to reject, as inapplicable to this case, a provision so comprehensive in its terms as necessarily to include all offices which are in any manner recognized by law as connected with the administration of the municipal or local concerns of the citizens of the state.

Independently of the limitations above referred to, it is also to be considered that the section in question applies only to those aliens "who shall hold any real estate by virtue of" certain provisions therein referred to, and was obviously designed to preclude the inference that the class of aliens to which it applied should, as a consequence of the duties and burdens of citizenship which it imposed, be entitled to the exercise of any rights not specially conferred on them. If the exclusion of aliens from the enjoyment of the rights of citizenship denied by this section depended upon this provision alone, it is not perceived why all other aliens excepting the class referred to might not exercise such rights, unless they were specially withheld by other provisions. The incapacity of aliens, excepting the class embraced in the section above quoted, to vote, hold offices or serve as jurors, must be found in other provisions of law; and indeed it may be shown that the incapacity of the class referred to, so far as voting or holding office is concerned, would have been the same if the latter part of the section had been wholly omitted. Their incapacity to vote at elections of public officers is provided for by section first, title first, chap. sixth, and section first, title second, chap. eleventh, of the first part of the Revised Statutes. Their incapacity to hold office is provided for by section first, title sixth, chap. fifth, and section eleventh, title third, chap. eleventh, of part first of the Revised Statutes. It is also a principle of common law that aliens shall be incapable of holding office or of serving on juries; and if, as before observed, their capacity or incapacity depended upon the section above quoted, they might be deemed capable both of holding office and serving on juries, unless they were of the particular class to which that section refers. The disqualification, therefore, contained in that section must be construed to intend merely that the particular class referred to shall not, as a consequence of the duties of citizenship imposed on them, be deemed to have acquired any of the rights denied to them by that section. The necessity of such a disqualification, so far as serving on juries is concerned, is manifest, since such service is as much "a duty and a burthen" as a right; and might have been exacted under the first part of the section but for the special disqualification provided for by the latter part, or unless, upon the general maxims of law, it was wholly inadmissible.

It is therefore conceived that the broad question whether alienism is a disqualification for voting at elections, holding office or serving on juries, is not determined by the section under consideration, the provisions of that section being applicable only to a special class of cases; but that it must be answered by a resort to other provisions of law of greater scope. For the present purpose it is only necessary to consider the capacity of aliens to hold office. It is a well established principle of the common law, confirmed by many statutory provisions, that an alien is incapable of holding an office. This principle was a part of the common law at the time the colonial dependence of this state upon Great Britain was thrown off, and it has not been rescinded by any constitutional or legislative provisions since that period: although many acts have been passed in confirmation of it in special cases. It may, perhaps, be questioned whether school district offices are of such public concern as to come within the principle of exclusion referred to; and the Superintendent has not without difficulty come to the conclusion that they are properly embraced by it. But although they may not be of the class of public or civil offices for which the statute intends to provide; yet as the disqualification of aliens at common law is without limitation, and as the qualifications of officers of school districts are not prescribed by statute, it is deemed most consistent with the rules of construction to consider the disqualification referred to as extending to every office which has a connexion, however remote, with the municipal or local concerns of the citizens; and such a connexion may be found in the duty confided to the trustees of school districts, in receiving and applying to the specified objects the revenues of the school fund.

On these grounds, therefore, the Superintendent concurs with the commissioners in the opinion given by them with regard to the ineligibility of Ellery to the office of trustee.

It appears by the affidavit of two of the trustees of district No. 14, that application was made, by the said Ellery and other inhabitants of the district, to the commissioners of common schools of Skaneateles to give their opinion thereon, (his capacity to serve,) and to appoint a new trustee in case it was necessary or proper; and that the commissioners decided that the said Ellery was incompetent, and that the office of trustee which he filled had in fact been vacant from the time of the annual meeting at which he was elected; and thereupon the said commissioners proceeded to fill the vacancy.

If the commissioners had a right to declare the office vacant, it is the opinion of the Superintendent that they should have waited one month after announcing their decision, for the inhabitants of the district to supply the vacancy. The intention of

the 71st section of the act relating to common schools is to confer on the commissioners the power of filling vacancies by appointment, where the inhabitants of the district have neglected to avail themselves of the right to fill them by election. The construction given to this section by the Superintendent renders the course above indicated the proper one to be pursued in all cases where vacancies exist. Ellery was elected without any suspicion, so far as is shown, that he was incapable of holding office; and it is manifest from the application subsequently made to the commissioners of Skaneateles for their opinion, that his incapacity was a matter of doubt among the inhabitants of the district. The spirit of the provisions of the section above referred to certainly requires that a district should have one month to fill a vacancy after knowing that it has occurred.

But in undertaking to make the appointment at all, the commissioners of Skaneateles exceeded their powers. The manifest intention of the title of the Revised Statutes relating to common schools is, that in all matters affecting a district lying partly in two or more adjoining towns, the commissioners of common schools of all the towns, or the major part of them, shall concur. The 71st section of the title referred to, it is true, does not in express terms require the concurrence of such commissioners in filling a vacancy under the particular circumstances specified therein, for it does not take notice of joint districts at all; and yet by giving the right of filling vacancies, under certain restrictions, to the "commissioners of the town" in which the district lies, the inference is a reasonable one that in the case of a joint district the commissioners of all the towns concerned should have a voice in the proceeding. A different construction would be at variance with the whole policy of the law in relation to such districts; and whenever a doubt arises as to the intention of the law in a case not specially provided for, the general provision in which it is embraced must be so construed as to consist with the tenor of other provisions affecting the exercise of the same class of powers. The Superintendent is therefore decidedly of the opinion that the jurisdiction of the commissioners of the two towns was a concurrent and not a separate jurisdiction, and that the act of the commissioners of Skaneateles in the case referred to was null and void. The fact that Ellery resided in the town of Skaneateles does not affect the principle.

It is due to the commissioners of Skaneateles to add, that the Superintendent can discover nothing in the testimony presented by the appellants to justify the imputation of any design on their part to assume a power not expressly given to them. The case was one in which they might not unreasonably consider themselves authorized to interpose. Nor was the provision of law un-

der which they acted in appointing Wyckoff, altogether clear in its terms; its true meaning was to be settled by construction, and the error on their part consisted in construing it in a manner not consistent with other provisions relating to the exercise of the same class of powers.

3d. It is a matter of complaint on the part of the appellants that the trustees of district No. 14 have refused to call a special meeting of the inhabitants for the purpose of consulting with regard to the selection of a new site and the erection of a new school-house. As this grievance will be remedied by the decision of the Superintendent on other points, it is only necessary to remark that it is the duty of the trustees to call a special meeting in all cases whenever it is requested by a reasonable number of the inhabitants; and if such request is refused, the Superintendent will on application to him direct a meeting to be held.

It is hereby ordered that the sale of the school-house by the trustees of said school district No. 14 be confirmed. And it is declared, that the appointment of Jonathan Wyckoff as trustee of said school district by the commissioners of common schools of the town of Skaneateles, on the 19th day of November last, is null and void. And it is further ordered, that the trustees of said school district proceed to call a special meeting of the taxable inhabitants for the purpose of filling the vacancy occasioned by the incapacity of Ellery to hold office, and for transacting such other business as the said inhabitants shall, when so assembled, deem necessary and proper.

The Trustees of school district No. 2 in the town of Bethel, *ex parte*.

If a school has not, in consequence of any overruling necessity, been kept three months by a qualified teacher, the district will be allowed a share of the public money on application to the Superintendent.

In district No. 2 in the town of Bethel the school-house was accidentally destroyed by fire. A tax was immediately voted to build a new one, and a contract made to have it completed in time for the fall term; but in consequence of the failure of the contractor to fulfil his engagement, a school was only kept in the district two months and twenty-two days by a qualified teacher.

By JOHN A. DIX, *February 7, 1834*. Where it has been impossible, in consequence of any overruling necessity, to have a school taught in a district the prescribed period of three months by a qualified teacher, the Superintendent has directed that the public money should, notwithstanding, be paid to the district as though there had been a strict compliance with the provisions of

the law.* The destruction of a school-house by fire may not be precisely such a case, because a room might possibly have been hired, and a school kept the prescribed period. But as the deficiency is for a very few days, I should be disposed, on a formal representation of the facts, to direct the commissioners of common schools to allow the district public money next spring, unless there appears to have been negligence on the part of the district or its officers.

The Trustees of school district No. 4 in the town of Maryland, *ex parte*.

The assessment roll kept by the town clerk is the one to be followed in assessing taxes.

In December, 1833, the trustees of school district No. 4 in the town of Maryland, called on the assessors and procured a copy of their last assessment roll for the purpose of assessing a tax to build a school house. On this copy they found the name of one Pitts, a resident of said district No. 4, whose property was assessed at \$600, and he was included in the tax list. Soon afterwards it was discovered, by referring to the original roll in the town clerk's office, that Pitts had been accidentally omitted; and the question presented to the Superintendent was, whether he was properly included in the tax list made out as aforesaid by the trustees.

By JOHN A. DIX, *February 17, 1834.* The last assessment roll of the town, which is to be consulted when taxes are to be assessed for school district purposes, is the one required by law to be kept by the town clerk for the use of the town. If this roll is departed from in assessing a tax upon the inhabitants of a school district, notice must be given, as directed in section 80, page 483, 1. R. S. Mr. Pitts, if a resident of the district and holding property, is clearly liable to taxation, whether he is on the "last assessment roll of the town" or not; but if he was omitted on that roll, the value of his property must be ascertained by the trustees in the manner specified in the section above referred to. I think the warrant ought not to be executed according to the present tax list, the assessment on Mr. Pitts not having been made in the manner prescribed by the statute, unless on a more careful examination of the roll in the town clerk's office his name appears on it. But unless Mr. Pitts waives objections, and consents to pay the amount assessed on him, (which he may as well do, as he must pay at last,) you will be empow-

* See the case of the trustees of school district No. 4 in the town of Somerset, page 84.

ered to make out the assessment anew on application to the Superintendent, with notice to him, (Mr. P.) In doing so, you will ascertain the value of his property from the best evidence in your power, giving notice as required by sec. 80. The lapse of time will work no prejudice to you, as the decisions of the Superintendent are final, and under the authority given by the statute he has always exercised a discretion in allowing errors of proceeding to be corrected with a view to accomplish the ends of justice.

The Trustees of school district No. 1 in the town of Redhook, *ex parte*.

A tenant is taxable, whether a householder or not, for land occupied and improved by him.

The following question was submitted to the Superintendent by the trustees of district No. 1 in the town of Redhook.

Is a man that resides in a district taxable for a non-resident piece of land leased and improved by him in the same district, he at the same time, not being a householder, but working with his father and others as it appears?

By JOHN A. DIX, *March 3, 1834*. If a man is in the actual occupation of a lot, belonging to a non-resident, as tenant of the latter, he is taxable for it. His liability to taxation does not depend upon his being a householder. He may board out, and yet if he hires the lot, and improves it as tenant of the non-resident owner, he is taxable for it.

The Trustees of school district No. 2 in the town of Kingsbury, *ex parte*.

The annual report of school districts should be made out by the 1st of March. If trustees neglect, without good cause, to make their annual report before the apportionment of the school moneys, they are without remedy.

This was an application to the Superintendent to allow school district No. 2 in the town of Kingsbury, out of the school moneys to be distributed in the year 1834, the amount of its share for the year 1833, which was lost by the neglect of the trustees to hand in their annual report before the first Tuesday of April, the day the apportionment was made by the commissioners.

By JOHN A. DIX, *March 3, 1834*. The 91st section of the act relating to common schools requires the trustees of school districts, on or before the 1st day of March in every year, to make their annual reports to the commissioners of common schools. The commissioners, if they do not receive all the reports, are in duty bound to wait until the first Tuesday of April

before they apportion the public moneys; but it is not the less imperative on the trustees to make their reports by the 1st of March. The 23rd section provides that "In making the apportionment of moneys among the several school districts, no share shall be allotted to any district, part of a district, or separate neighborhood, from which no sufficient annual report shall have been received, for the year ending on the last day of December, immediately preceding the apportionment." You do not say on what day your report was handed to the commissioners or on what day they made the apportionment. If they received it before the 1st Tuesday of April, it was in time, and they were wrong in excluding your district from the apportionment. But if they apportioned the public money on the first Tuesday of April, and your report was not handed in until the next day, you are without remedy, unless you were prevented by some cause which you could not control. If your report was handed in before the 1st Tuesday of April, or if from any accident it was not handed in until after that day, I will, when you shall have verified the fact by affidavit, direct the commissioners to supply the deficiency out of the public moneys to be distributed next April.

The Trustees of school district No. 14 in the town of Catlin, *ex parte*.

Fuel provided for school districts must not be used for meetings held in the school-house.

This was an application for the direction of the Superintendent in a case where temperance and other meetings had, by general consent, been held in the district school-house during the winter; the fuel provided for the school having, on such occasions, been used for the purpose of warming the house.

By JOHN A. DIX, *March 6, 1834*. It is extremely improper to allow the fuel which is provided and paid for by the inhabitants of school districts for common school purposes, to be used for any other purpose whatever. If the use of the school-house is solicited for the accommodation of temperance or other meetings, and if it is by general consent so used, the persons to whom the favor is extended must see that the district is not charged with the expense of warming or lighting the house. The custody of the school-house is committed by the statute to the trustees, and it is their duty to see that the interests of the district are protected. If they allow the fuel provided for the use of the school to be consumed for other purposes, they will be personally responsible for it. Whether the fuel is paid for by a tax, or whether it is provided by those who send their children to school, is of no

consequence. The principle is the same in both cases. But in the latter the individual grievance is undoubtedly greater, and the trustees must see that it is redressed. Those who have used the school-house should be required to pay for or replace the wood they have consumed, before they are allowed to use it again.

The Trustees of school district No. 8 in the town of Rensselaerville, *ex parte*.

Executors are to be taxed where they reside for the personal property in their possession or under their control.

D. C., an inhabitant of school district No. 8 in the town of Rensselaerville, died in June, 1833, leaving a large personal property. There were four executors under the will, one residing in the city of New-York, one in Albany, and two in the district, having severally personal property belonging to the estate in their hands. The question submitted was in what manner they should be assessed for a tax voted to build a school-house.

By JOHN A. DIX, March 6, 1834. The two persons referred to in your letter as residing in your district, are to be jointly assessed as executors for all the personal estate which they possess or control in their representative character. Their names must be entered, on the tax list as follows:

A. B. }
C. D. } Executors of, &c.

The tax must be upon the whole amount of property in the possession or under the control of the executors residing in the district. If there were assets in the hands of one of the non-resident executors, those assets could not be taxed in your district. The number of executors has nothing to do with the rule of taxation. Only so much of the personal estate as is in the possession or under the control of the resident executors is to be taxed. It is true that in contemplation of law the property referred to may be equally under the control of all the executors; but for the purposes of taxation, the construction which I have given to it is indispensable to give effect to the provisions of section 5, page 389, 1 R. S. Your attention is called to section 10, page 391, same volume. The debts referred to in this section are such as are specified in sec. 27, page 87, 2 R. S. It is in the power of the executors to claim a reduction, under the provisions of sec. 79, page 482, 1 R. S.; and under sec. 16, page 392, same vol. they may reduce the amount by a specification of the value of the property.

The Trustees of school district No. — in the town of Greenfield, *ex parte*.

Two taxes voted at the same time may be included in the same tax list.

In school district No. — in the town of Greenfield, a tax was voted to purchase fuel, and at the same time another tax was directed to be levied to repair the school-house. The trustees proceeded to make out the tax list, including in it both sums. The question presented was whether the proceeding was legal.

By JOHN A. DIX, *March 7, 1834*. There is no objection to including in one tax list two or more sums voted at the same time to be raised by a tax on a school district for different objects. It is merely necessary that the trustees, when the whole amount is collected, appropriate the several sums to the purposes for which they are authorized to be raised.

The Trustees of school district No. 8 in the town of Little-Falls, *ex parte*.

If an individual acquires or parts with property after the last assessment roll of the town is made out, the roll must not be followed in making out a tax list.

In school district No. 8 in the town of Little-Falls, an individual sold the farm, for which he was assessed in the last assessment roll of the town, after the roll was made out, but still remained in the district, and made other investments. The question presented was whether the last assessment roll was to be followed in such a case.

By JOHN A. DIX, *March 7, 1834*. When a resident in a school district acquires additional property, or parts with property after the town assessment roll is completed, it is such a case as is contemplated by the words "where the valuation of taxable property cannot be ascertained from the last assessment roll of the town," in sec. 80, page 483, 1 R. S. unless it is a simple purchase or sale of a farm or lot, the value of which is separately fixed and shown by the assessment roll. If the trustees depart from the last assessment roll of the town, for the reason above assigned, they must give notice and proceed in the manner prescribed in that section.

John Haywood and William Haywood, against the Trustees of school district No. 6 in the town of Gates.

To subject the unimproved part of a lot belonging to a non-resident to taxation, the improved part must be occupied by an agent or servant.

The facts of this case are fully given in the Superintendent's order.

By JOHN A. DIX, *March 3, 1834.* On the fifth day of November last, a tax was laid by the inhabitants of school district No. 6 in the town of Gates, to build a new school-house, and on the third of December following the tax list was made out by the trustees. John Haywood and William Haywood were taxed twenty-three dollars and between sixty and seventy cents, on account of two lots, which are partly cultivated and partly unimproved. The Messrs. Haywoods are both non-residents of the district, and appeal from the assessment made upon them.

It appears by the affidavit of John Haywood, that the first lot consists of about thirty-three or four acres, about one half of which is improved by the owners; that a man by the name of Mansfield occupies a small log house and a small patch as a garden, that he occupies the same at sufferance, has paid no rent, is not charged with any rent, that he is in no respect an agent for the said owners, and that he has never been employed by the owners in any way. These facts are not denied by the trustees of the district in their answer to the appeal of said Haywoods from the assessment made upon them.

The second lot contains about ninety acres, about twenty-five of which were cultivated in October or November last, when said Haywoods purchased it of one Charles Green, and took from him a deed of conveyance of the same. At the time of the purchase it was agreed between the parties verbally that Green might remain on the lot and occupy it till April next. John Haywood swears that Green was in no respect an agent or tenant of the owners, except as before stated, and that he left the lot in January, since which time no other person has occupied or resided on the lot. These facts are not denied by the trustees.

The Superintendent is of opinion that there is in neither of these cases such an occupancy as to subject the non-resident owners to taxation on the whole of either lot. The law provides expressly that no more than the cleared and cultivated part of a lot shall be taxed to a non-resident owner, unless he improves it by an agent or servant; and it would be a total departure from the spirit of its provisions to tax the unimproved part of a lot on the ground of a temporary occupancy of the improved part by the sufferance of the owner, without any benefit on his part, by

reason of such occupancy, the occupant neither paying him rent nor being in any way employed in his service. So far as the second lot is concerned no reason is perceived why it may not have been assessed to Green, the vendor, who remained in possession.

Two of the trustees swear that the Haywoods were informed of the amount of their tax and promised to pay it. It does not appear, however, that they were aware that they had been taxed for the whole of the lots; nor can such a notice or assent deprive them of the right to appeal in the manner designated by law, and resist an assessment which is wholly without authority.

The trustees object to the appeal that they had only six days' notice of its presentation, instead of ten as required by regulation. But they have, by answering, waived the objection, and rendered it unnecessary for the Superintendent to allow the appellants to amend their notice.

It is therefore ordered, that the trustees of school district No. 6 aforesaid, amend their assessment so as to include only the value of such parts of the lots in question as are cleared and cultivated; and that their tax list be made out and the tax collected in conformity thereto.

The Trustees of school district No. 2 in the town of Rhinebeck, *ex parte*.

A sloop must be taxed where the owner resides.

Messrs. Schryver & Bergh owned a landing and a sloop in district No. 2 in the town of Rhinebeck, and carried on the business of freighting. In the last assessment roll of the town the property was assessed to Williamson & Bergh, Schryver being a non-resident of the district, and Williamson being in the occupation of the landing as lessee. Bergh, the other partner, was a resident of the district. A tax was soon afterwards voted to build a school-house, and in the mean time Williamson's interest in the concern ceased and he left the district. The question presented to the Superintendent was in what manner the property should be assessed.

By JOHN A. DIX, *March 17, 1834.* Taxes for school district purposes are to be assessed upon the taxable inhabitants residing in the district at the time the tax list is made out. Non-residents can be taxed only for real estate in the district in which such real estate lies. The owner of the dock, whether a resident or not, may be taxed for it, unless it is in the occupation of a resident lessee or tenant, in which case the latter would be taxable for it if the owner is a non-resident. But the owner of

the vessel must be taxed for it in the district in which he resides. If Mr. Bergh resides in your district the firm may be taxed for the sloop, and the tax collected from the resident partner. If you cannot, as I suppose, follow the assessment roll of the town in this case, you must give the notice required by sec. 80 of the act relating to common schools.

The Trustees of school district No. 30 in the town of Johnstown, against the inhabitants of said district.

If trustees are directed by a vote of the district to make such repairs as they may think proper on the school-house, and the district afterwards refuses to lay a tax for the purpose, the Superintendent will order an amount sufficient to cover the reasonable expenditures of the trustees to be raised.

The facts connected with this appeal are stated in the order of the Superintendent.

By JOHN A. DIX, *March 17, 1834.* On the 20th of April, 1833, at an annual meeting of the taxable inhabitants of school district No. 30 in the town of Johnstown, it was resolved that "the trustees should make what repairs they thought proper and necessary on the school-house some time before the winter school commenced." In thus giving to the trustees an unlimited discretion over the repairs to be made in the school-house, the inhabitants virtually pledged themselves to raise by a voluntary imposition upon their property such a sum as should be necessary to defray all expenditures made in good faith by the trustees in executing their directions. In pursuance of the authority given to the trustees they entered into a contract with William Lewis to make certain repairs therein specified, and stipulated to pay him the sum of thirty dollars for his work.

On the 7th January last, at a special meeting of the inhabitants of said district it was resolved to allow the trustees twenty-five dollars for the carpenter's work done to the school-house. It was also resolved to allow them ten dollars and twenty-two cents for a stove and pipe, and two dollars and fifty cents for building a chimney. From these sums, amounting to thirty-seven dollars and seventy-two cents, was to be deducted the sum of two dollars and thirty-two cents, the amount for which the brick and iron of the old chimney sold, leaving a balance of thirty-five dollars and forty cents to be collected by the trustees for the purpose of defraying the expenses incurred in pursuance of the vote of the inhabitants on the 20th of April. From these proceedings the trustees appeal to the Superintendent of Common Schools, on the ground that the expenditures having been made in good faith, and they being personally responsible to Lewis for

the amount contracted to be paid to him, the district ought to have voted a tax equal to the amount of the pecuniary liability incurred by them in carrying into effect the directions of the inhabitants; and they pray that an order may be granted directing thirty instead of twenty-five dollars to be levied on the district to satisfy Lewis' claim.

The Superintendent is of opinion that the inhabitants are bound to exonerate the trustees from the responsibility which they have incurred, and nothing but an abuse on the part of the latter of the authority conferred on them could justify a refusal to raise the amount stipulated to be paid to the person by whom the work has been performed. The discretion imparted to the trustees was unlimited, and it is too late for the inhabitants when the trust has been executed, to undertake to limit the amount for which they are answerable, unless abuse can be shown. The trustees, in executing the contract with Lewis, acted as their agent; and if Lewis should prosecute and recover the amount contracted to be paid to him, it would be the duty of the trustees to pay the amount so recovered out of any moneys belonging to the district in their hands. To avoid such an alternative, and to release the trustees from the responsibility which they have incurred, the Superintendent deems it proper that the whole amount necessary to satisfy the demand of Lewis should be levied upon the district. The district has had notice of the application by service of a copy of the papers on which it is founded, on the clerk, and no objection to the relief prayed for has been made.

It is, therefore, ordered that the trustees of said school district No. 30, proceed to make out the tax list so as to levy on the taxable inhabitants the sum of forty dollars and forty cents, instead of thirty-five dollars and forty cents, as directed by the vote of the district on the 7th of January last.

(ANONYMOUS.)

If a child attends school half a day, it is to be reckoned as half a day.

By JOHN A. DIX, *March 18, 1834.* If a child attends school part of a day only, it is to be reckoned as half of a day. Nothing less than half a day can properly be recognized by a teacher in making out his school list.

Joseph Budd and others, *against* the inhabitants of school district No. 5 in the town of Murray.

Public money should be fairly divided between the summer and winter terms.

In school district No. 5 in the town of Murray, at the annual meeting in October, 1833, it was voted that two-thirds of the

public money to be received in the spring of 1834, should be applied to the winter school, and one-third to the summer school. On the 25th November, 1833, Daniel Wellman was employed as teacher, and continued till about the last of December, when he was dismissed, and another teacher was employed early in January, who continued to teach until spring. Mr. Wellman was inspected and received a certificate of qualification before he commenced, but the certificate was annulled in about two weeks afterwards by the inspectors. Soon after the second teacher commenced his school, a number of the inhabitants of the district withdrew their children and sent them to a select school. In February, 1834, the vote passed at the annual meeting in October preceding, in relation to the public money, was annulled, and the whole voted to be applied to the winter term. From these proceedings an appeal was brought.

By JOHN A. DIX, *March 24, 1834.* On examination of the appeal of certain inhabitants of school district No. 5, Murray, Orleans county, from the proceedings of two special meetings, held on the 3d and 10th of February last, it appears that at the annual meeting of the inhabitants of said district, on the 26th of October last, it was resolved unanimously, that two-thirds of the public money for the year 1834, be applied to the winter school, and the remaining third to the summer school. It also appears that a meeting of the inhabitants of said district was called on the third of February last, "for the purpose of regulating the district school," and that said meeting was adjourned to the tenth of the same month, at which time it was resolved that the vote of the 26th October, with regard to the application of the public money, should be repealed, and that all the public money should be applied to the winter school, commencing 9th January, 1834.

To these proceedings exception is taken upon several grounds, which, for the purposes of this decision, it is unnecessary to specify.

The principal and the only substantial objection to the proceedings of the meeting on the 3d February, is, that the notice did not set forth in specific terms the object in view. In a matter so important as that of annulling a previous vote of the inhabitants in relation to the public money, it is due to all concerned that ample notice should be given of the intended proceeding. This was not done in the case under consideration. The notice set forth merely that the object of the meeting was to regulate the district school; and it is manifest that without some other intimation, an intention of making a new appropriation of the public money would not readily have been inferred from the terms of the notice. The same objection applies to the adjourn-

ed meeting on the 10th February, of which no notice was given, as the adjournment was for less time than one month.

So far as the inhabitants resolved to apply none of the public money to be received this year to the payment of teachers' wages for services rendered previous to the first of January last, they acted in conformity to the requirements of the law. The money apportioned in 1834, must be applied during the year, and Mr. Wellman, who taught school in November and December, 1833, cannot, under the provisions of the law, receive any portion of it.

It is undoubtedly most proper that a fair division of the public money should be made between the winter and summer terms, as the children of indigent persons are often, for the want of comfortable clothing, unable to attend the winter school. But in this case a large number of children residing in the district have been withdrawn from the school, the maintenance of which falls upon comparatively few persons, and the Superintendent deems it no more than just to direct, as a fair support has not been given to the school, that two-thirds of the public money received in 1834, shall be applied to the winter term commencing on the 9th January last, and to submit to the inhabitants of the district whether the remaining third shall be applied to the winter or summer term.

It is accordingly ordered, that the proceedings of the meetings of the 3d and 10th February, be set aside; that two-thirds of the public money, which the trustees of said district No. 5 may receive during the present year, shall be applied to the term commencing on the 9th January last; and that the trustees proceed forthwith to call a special meeting of the taxable inhabitants for the purpose of deciding whether the remaining third of the said money shall be applied to the term last mentioned, or to the school which may be kept next summer.

The inhabitants of school district No. 14 in the towns of Marcellus and Skaneateles, *ex parte*.

Suits for penalties against district officers for neglecting to perform the duties of their office, must be brought by commissioners of common schools.

The penalty provided in case district officers neglect to perform the duties of their office, is intended for cases of total neglect.

If a clerk neglects to keep a book of minutes, he is not responsible unless a book is provided for him.

This was a case in which the clerk of a school district had neglected to keep any record of the proceedings of the district. The questions presented to the Superintendent were, whether he could be prosecuted for neglect to perform the duties of his office—if so, by whom, and if there was any limitation of time in bringing such suit.

By JOHN A. DIX, *March 28, 1834.* Suits against school district officers for penalties for neglecting to perform the duties of their office must be brought by the commissioners of common schools of the town; but there is no special limitation of such actions in point of time. They may perhaps be considered as coming within the general provision of the Revised Statutes contained in the 31st section, 2d vol. page 298, by a construction which should regard the town as the party aggrieved, and the commissioners as the representatives of the town in bringing the suit. A suit could, in that case, not be brought after three years.

Before the clerk of the district is prosecuted, it might be well to refer to the case of Spafford and Hood in the sixth volume of Cowen's Reports, page 478, in which the court held that the penalty provided by sec. 22 of the common school act, passed in 1819,* could not be exacted for an omission of duty in an individual instance, but was intended for cases where there had been a total neglect of the duties of the office. If you will refer to section 74 of the Revised Statutes, vol. 1, page 480, you will perceive that the district is to provide a book for the clerk to record its proceedings, &c. Without reference to the principle of the decision above referred to, it would be necessary, in order to make him answerable, to show that such a book had been provided.

The Trustees of school district No. 2 in the town of Clarkstown, *ex parte.*

If trustees contract to pay a teacher a specific sum per month or per scholar, the mode of providing for the payment of his wages must be the same in either case.

This was a case in which the trustees contracted to pay a teacher a specific sum for each scholar attending during the term, and the question presented to the Superintendent was in what manner his wages should be paid.

* Sec. 72, page 480, vol. 1, R. S. In the case referred to, Judge Sutherland, who pronounced the decision of the court, said, "Where it is the intention of the legislature to impose a penalty on an officer for the omission of any particular duty, they use language which is clear and explicit. Thus in relation to the overseers of highways (2 R. L. 274, §14) it is provided, 'That every overseer of highways who shall neglect or refuse to warn the people assessed to work on the highways, &c., or to collect the moneys that may arise from fines or commutations, or to perform *any of the duties* and services required by the act, or which may be enjoined on him by the commissioners, &c., shall forfeit *for every such neglect or refusal*, the sum of \$10,' &c. The difference in the phraseology of these acts is very striking, and in my judgment affords strong confirmation of the correctness of the construction we have given to the section of the school act under consideration."

By JOHN A. DIX, *April 21, 1834.* The trustees of a school district may make a contract with a teacher to pay him by the month, the week, or at so much a scholar; but in raising the sum necessary for his compensation, they must proceed as the law directs. Subdivisions 8, 9, 10, 11, 12, 13 and 14, of section 75, 1 R. S. pages 481 and 482, point out their duty, and they cannot by any contract with a teacher, impose upon the inhabitants of the district an obligation to pay him in any other manner. To agree to pay so much per scholar can therefore have no other legal effect than to furnish a rule for ascertaining the amount of the teacher's wages. The inhabitants must still pay according to the rule established by subdivision No. 12 of the section above referred to.

(ANONYMOUS.)

If two farms are set off from one school district to another, and contain within them a third not included in the order of the commissioners, the latter must nevertheless go with them.

By JOHN A. DIX, *April 4, 1834.* A question has been submitted to me with regard to two farms set off from one district to another. As I understand the case, these two farms contained within them another farm which did not touch on the external boundaries of either. The question was, whether this farm, thus enclosed by the others, was set off with them, or whether it continued to be a part of the district from which they were taken. The answer is, that it must be considered as set off with them, although it be not expressly named. By setting off the farms referred to, the districts acquire new boundaries, and all the farms lying on either side of the new line of division must belong to the district within the limits of which it is included. School districts must consist of contiguous territory, and no arrangement which violates this rule can be sanctioned. The case submitted to me probably originated in error; and it would be well for the commissioners of common schools to amend their record, and specify the farm which has raised the question, as one of those set off, although it must go along with the others by force of the rule above stated.

The Trustees of school district No. 11 in the town of Harpersfield, *ex parte.*

A tax cannot be voted to pay costs of suit recovered against the trustees of a school district.

In this case a suit was commenced by the trustees against an individual on a contract for building a school-house. Before bringing the suit, the trustees consulted the inhabitants, and

were directed to proceed. The suit failed, and the question presented was in what manner the costs could be paid.

By JOHN A. DIX, *April 5, 1836*. The inhabitants of a school district cannot vote a tax to pay costs of suit recovered against the trustees. By referring to the 2d volume of the Revised Statutes, page 476, section 108, you will perceive that trustees may charge in their official accounts, the amount of debt, damages, or costs recovered against and collected of them. They would not be authorized to pay the amount so recovered out of any moneys received by them for the payment of teachers' wages; but they would be justifiable in paying it out of moneys in their hands levied upon the taxable property of the district for any of the objects specified in sub. 5 of sec. 61, 1 R. S. page 478. If no such moneys were in their hands, they would be compelled to resort to the legislature for relief.

In this case the district is bound by every equitable consideration to save the trustees harmless, and the inhabitants ought, if there is no other method of doing so, to raise by subscription the amount necessary to pay the costs for which they are liable.

The Trustees of school district No. 10 in the town of Gainesville, *against* the Commissioners of Common Schools of said town.

In appraising a school-house, when a new district is formed, the commissioners must deduct debts due from the district retaining the school-house.

This was an application for the decision of the Superintendent on a statement of facts agreed to and submitted by the parties. In forming a new district, by a division of school district No. 10 in the town of Gainesville, the commissioners appraised the school-house remaining in the latter at its full value, without making any allowance for a debt of \$25.15 due for the construction of the house, the person who erected it not having been fully paid. The debt thus due arose from the inability of the collector to collect a portion of the tax equal to that amount from inhabitants of the district, who were included in the assessment roll of the town, but who had no property on which he could levy; and in the mean time they had removed from the district, with the exception of one of the individuals who was set off to the new district.

By JOHN A. DIX, *April 28, 1834*. The commissioners do not, upon the statement of facts presented, appear to have done what the law requires. They should deduct all debts due from district No. 10. See sec. 68, 1 R. S. page 479. The taxes referred to as unpaid by the persons on whom they were assessed are a charge on the district, as they cannot be collected of the per-

sons from whom they are due, and the whole amount should be deducted from the value of the school-house.

The commissioners must amend their appraisement by deducting from the value of the school-house \$25.15.

(ANONYMOUS.)

The wages of two teachers employed for different terms cannot be included in the same rate bill.

By JOHN A. DIX, *May 7, 1834*. If two teachers are employed in succession for different terms, at different rates of compensation, they should receive for their wages an equal amount of the public moneys on hand, and the residue of the wages of each should be paid by a rate bill made out against those who patronized their schools, respectively. It is wholly inadmissible to provide by the same rate bill for the compensation of two teachers for different terms of instruction.

The Trustees of school district No. 7 in the town of Marcy, *ex parte*.

A tax to build a school-house may be raised, but should not be expended, before the district has acquired such an interest in the site as to be able to control the house.

(A tax cannot be raised to build a school-house on a site selected without legal authority. See note.)

In this case the agent of a glass factory gave the inhabitants of school district No. 7 in the town of Marcy, permission to build a school-house on the corner of the land belonging to the company, and engaged to use his exertions to procure a conveyance of the site free of expense to the district. The question submitted was whether the district should build the school-house under these circumstances.

By JOHN A. DIX, *May 7, 1834*. I have received a statement of facts respecting a tax voted by the inhabitants of school district No. 7 in the town of Marcy, for the purpose of building a school-house. The right to collect the tax is perfect, without regard to the condition of the lot on which it is proposed to build the school-house; and no person can refuse to pay his tax because the district has not procured a conveyance of the lot.* At the

* In the case of *Baker vs. Freeman*, 9 Wendell, 36, the supreme court decided that a tax was unauthorized and void, where it had been voted for the purpose of building a school-house on a site which had been selected without any legal authority. In this case the district had a school-house, and the site was changed without taking the steps required by law.

So in the case of the trustees of school district No. — in the town of Winfield, page 60, the Superintendent would not allow a tax to be collected to repair a

same time a school-house must not be built without some legal right to control it. There ought to be at least a written agreement on the part of the agent of the glass factory company that the district may remove the school-house, unless a title to the land shall be procured. If such an agreement cannot be obtained the district should build the house elsewhere, although the tax may be collected notwithstanding.

(ANONYMOUS.)

A vote to divide public money into portions may be taken at any time before the money is expended.

By JOHN A. DIX, *May 7, 1834.* The inhabitants of a school district, may at any time before the public money is expended, vote that it be divided into portions, provided that by such vote it is all to be expended during the year in which the money was received. The vote may be taken at any meeting, annual or special.

(ANONYMOUS.)

A district cannot make a second division of the public money after a rate bill has been made out and delivered to the collector.

By JOHN A. DIX, *May 7, 1834.* Where the public money has been appropriated by a vote of the inhabitants of a school district to the payment of a teacher's wages for particular terms, and the trustees have gone on in pursuance of such vote to make out a rate bill for the amount necessary to make up the deficiency of the public money to pay said teacher's wages for one term, if said trustees have delivered the rate bill and warrant to the collector, and the latter has actually commenced collecting upon such rate bill, the inhabitants have no right to make a different division of the public money by a subsequent vote, and thus render it necessary to make out a new rate bill.

(ANONYMOUS.)

Parents cannot be compelled to send their children to school.

By JOHN A. DIX, *May 19, 1834.* Trustees cannot compel any inhabitant of the district to send his children to the district school. They are of course entitled to receive and apply, for the

school-house to which the district had no title, and which the owner had forbidden the trustees to repair.

In these two cases the money to be raised could not be properly expended. In the case above reported there was no violation of law in voting the tax, and the proposed site was to be occupied with the consent of the person having charge of the land for the time being.

support of the district school, all the public money apportioned to the district; but if any person chooses to send his children to a private school he has an undoubted right to do so.

The Trustees of school district No. 3 in the town of Gainesville, *ex parte*.

Fuel, when furnished in kind, must be in proportion to the number of children sent to school and the number of days' attendance.

This was an application for the opinion of the Superintendent in a case where the trustees had made out, at the beginning of the term, an estimate of the quantity of wood to be furnished by each inhabitant, according to the number of children proposed to be sent to school, and had afterwards altered the amount, in several cases, to meet changes in the school.

By JOHN A. DIX, *May 20, 1834.* There is some difficulty in furnishing fuel in kind for school districts, and it can only be obviated by a willingness on the part of all concerned to do justice to each other. The statute provides that the proportion to be furnished by every person sending to school shall be "according to the number of children sent by each." But the language of this provision is clearly to receive such a reasonable construction as will make each inhabitant contribute in proportion to the benefits he has received.

Suppose a school is opened for a term of three months, and the trustees, in making out the apportionment of fuel according to the form provided for such cases, (see Appendix,) set down A. B. and C. D. for three children each. At the end of one week two of the children of A. B. are taken sick and are unable to attend during the residue of the term, while the three children of C. D. continue during the whole period of three months. Ought the apportionment made at the commencement of the term to be enforced, when a change of circumstances has rendered it wholly unequal and inequitable? Clearly not. It must be corrected according to the directions of the Superintendent of Common Schools, under the form above referred to;* and the principle of the apportionment must be, as nearly as possible, in a compound ratio of the number of children sent to school, and the time during which they are sent. This is the only construction of the law which can make it equal and just in practice. As I have already observed there is some difficulty in making the relative contributions of the patrons of the school exact in all cases; but the approximation to exactness must be as near as possible. If this difficulty cannot be adjusted amicably, and upon fair principles,

* See decision by A. C. Flagg, April 28, 1831, page 39.

it is better hereafter to vote a tax, and let the property of the district provide the fuel.

The Trustees of joint school district No. 11 in the town of Deerfield and No. 14 in the town of Marcy, *ex parte*.

Commissioners of common schools have no authority to designate a site for a school-house, or to give a conditional consent to a change of the site.

In this case the commissioners of common schools of the towns of Deerfield and Marcy gave their consent to change the site of the school-house in a joint district in said towns. The inhabitants of the district immediately assembled, pursuant to a notice regularly given, and fixed a new site. Soon afterwards, on the application of some dissatisfied persons, the commissioners revoked their former proceedings and gave a written consent to a change of site, provided it should be fixed by the inhabitants of the district at a particular place. An application was made to the Superintendent under these circumstances for his opinion as to the regularity of the proceedings of the commissioners.

By JOHN A. DIX, *June 12, 1834*. Commissioners of common schools have no right to designate the site for a school-house,* nor do I think it proper that they should give a conditional consent to a change of site. If such a change is required by the convenience of a district, they may give their consent; but they have no right to say where the new site shall be fixed. This is a matter which has been left by the law to the decision of the inhabitants.

If the facts stated in your letters were satisfactorily shown, I should most certainly hold the revocation of their consent as first given by the commissioners to be wholly nugatory. Their consent having once been given, and the inhabitants having fixed the site, the matter was ended. If any person considered himself aggrieved, the proper course was an appeal to the Superintendent of Common Schools.

The Commissioners of Common Schools of the town of Pitcher, *ex parte*.

When a town is divided and a new one formed, or when two existing towns are altered, the public moneys are apportioned between them according to the number of children between 5 and 16 years of age.

In this case several lots having been transferred by an act of the legislature from the town of Lincklaen to the town of Pitcher,

* See the case of the commissioners of common schools of the town of Burns, page 13.

the commissioners of the latter applied to the Superintendent to be instructed as to the manner in which the public moneys should be re-apportioned between the two towns.

By JOHN A. DIX, *June 12, 1834.* Whenever a town is divided there must be a new apportionment of school moneys, so that the parts separated from each other may have, in this respect, the same exact justice to which they were entitled when they were together. The apportionment would naturally be made upon the basis of the population of the respective parts; but as it is not easy, when a town is altered or a new one formed, to ascertain the number of inhabitants in the divided territory, the apportionment has usually been made with reference to the number of children between five and sixteen years of age. As they are annually enumerated, a ready mode is presented of ascertaining, (by a standard too which is as just as the other,) what each part of the divided territory is entitled to.

The process is so simple that it has usually been attended to by the commissioners of the two towns without any reference of the subject to the Superintendent of Common Schools, except in case of a disagreement, which very rarely happens. The same course can be pursued by you, with regard to the lots transferred from Lincklaen. You can agree on the apportionment and file a copy of the agreement with the county treasurer and another with the clerk of the board of supervisors. Nothing further will be required until the next census is taken.

The Trustees of joint school district No. 6 in the towns of Tyrone and Barrington, *against* the commissioners of common schools of the latter town.

Joint districts can only be altered by the concurrence of the commissioners of all the towns of which they constitute a part.

The orders of the commissioners altering joint districts must be put on record in all the towns of which the districts are a part.

The regulation of the Superintendent requiring an appeal to be made within thirty days after the proceeding complained of, is not to be enforced against an aggrieved party having no knowledge of such proceeding.

The facts of this case are recited in the Superintendent's order.

By JOHN A. DIX, *June 12, 1834.* This is an appeal by the trustees of joint school district No. 6 in the towns of Tyrone and Barrington, from the proceedings of the commissioners of common schools of the town of Barrington in refusing to pay over to said trustees the public money due from the town last mentioned for the present year.

From the representations of the parties it appears that district No. 6, aforesaid, was formed in the year 1819, as a school district

in the town of Wayne. This town was a few years afterwards divided into the towns of Wayne, Tyrone and Barrington, and district No. 6 became a joint district of the two latter towns. On the 5th day of January, 1833, the commissioners of common schools of the town of Barrington met at the Baptist meeting house in said town, and formed a new school district by the designation of district No. 8. This district was formed wholly of territory belonging to the town of Barrington, but included several inhabitants of joint district No. 6. On the first Tuesday of April last, the report of the last mentioned district for the year 1833 was presented to the commissioners of Barrington, who refused to apportion any public money to said district, on the ground that the report was false, as it included four children residing with Jonathan Silsbee, and one residing with Dennis Sunderlin, both of whom had been included in district No. 8 at the time of its formation. The trustees of joint district No. 6 allege, that Sunderlin belongs to said district, but it does not appear, except by inference, from the answer of the commissioners, that Silsbee was also included in said district previous to the formation of district No. 8.

The alteration made in joint district No. 6 was clearly unauthorized by law, and is therefore void. It has been repeatedly decided by the Superintendent of Common Schools, that the alteration of a town line does not affect the organization of a school district. Decision 87,* to which the commissioners have referred in their answer to the appeal, expressly declares, that "where the line of a new town runs through a school district, the commissioners of the old and new town should regard a district thus intersected by a town line, as a joint district." In the original formation of school districts, if the lines of towns and counties can be made also the lines of school districts with convenience to the parties interested, it is desirable to adopt them, as the affairs of single districts are more easily conducted than those of joint districts. But a district being once formed, it cannot be altered without some action on the part of the authority appointed by law to make such alterations. Where a new town is formed and the line intersects a school district, it becomes, as a matter of course, a joint district, for it is only as such that it can receive from both towns the public money, to which it is entitled. The moment a single district becomes joint, the action of the commissioners of all the towns of which it is a part, is indispensable to give validity to any alteration in its boundaries. The commissioners of Barrington had, consequently, no right to

* See the case of the commissioners of common schools of the town of Starkey, page 1.

set off an inhabitant from joint district No. 6, without the concurrence of the commissioners of Tyrone.

The commissioners of Barrington object to the regularity of the appeal, that it contains no map exhibiting the sites of the school-houses of the districts concerned. Such a map is not in this case necessary. The question presented is not whether an alteration in joint district No. 6 ought or ought not to be made as a matter of convenience to the parties, but whether the alteration made is valid, and if so, whether the ground assumed by the commissioners in refusing to apportion to that district its proper share of the public money can be maintained upon legal principles.

Section 21st of the 1st vol. of the Revised Statutes, page 471, and decision No. 77* of the Superintendent, intend clearly that no alteration shall be made in a joint district, unless such alteration has the concurrence of a majority of the commissioners of each of the towns interested. Whether the district remains a joint district after such alteration, or whether the effect of such alteration is to make it a single district, is of no consequence. The rule is the same in both cases. This construction is in entire accordance with the whole tenor of the Superintendent's decisions; and if it is not clear from the language of section 21 that such is the true meaning of that section, all doubt on this point will be dispelled by a reference to section 65, 1st vol. Revised Statutes, page 479, which provides for the case of a refusal on the part of the commissioners of one town to act with the commissioners of another for the purpose of altering a joint district. The true course to have been pursued in this case was, for the commissioners of Barrington, on the application of some of the persons interested in the new school district to have summoned the commissioners of Tyrone, to attend a joint meeting of the commissioners of both towns for the purpose of setting off to the new district the persons residing in Barrington, and belonging to joint district No. 6. In this alteration the commissioners of both towns must have concurred, and the proceedings should have been made a matter of record in both towns. Beyond this the commissioners of Tyrone had no authority to act. The formation of a new school district lying wholly within the town of Barrington and composed of persons not belonging to a joint district was a matter for the determination of the commissioners of that town only; but no person belonging to a district lying partly in Tyrone could be set to such new district without the concurrence of the commissioners

* See the case of the inhabitants of joint school district No. 15 in Warwick and Goshen, page 23.

of the latter town. It follows, of course, that all orders making alterations in joint districts must be put on record in all the towns of which such districts constitute a part, even though such alterations do not directly affect persons residing in all the towns in which they are recorded. Thus, although no inhabitant of Tyrone was taken from district No 6 to form district No. 8, the order signed by the commissioners of both towns should have been recorded in Tyrone, because No. 6 lies partly in that town. It is clear that unless such records are made, the commissioners of one town can never know the boundaries of a joint district without resorting to records in another town, over which they have no control.

The objection made by the commissioners, that their proceedings in altering joint district No. 6 were not appealed from within thirty days, the time limited by the regulations of the Superintendent, has no force. Proceedings wholly without authority will at any time be declared void by the Superintendent on application to him, with notice to the party interested in sustaining them. The proceeding under consideration is not only void for want of authority in the commissioners of Barrington to make an alteration in a joint district without the concurrence of the commissioners of Tyrone, but it is wholly inoperative for want of the legal notice required by law to be served on the trustees of a district when an alteration is made in it without their consent. It does not appear that any such notice was ever given; and it would surely conduce very little to the ends of justice to sustain a void proceeding, if such an exercise of power were possible, on the mere ground that it had not been made a subject of appeal within the time prescribed by regulation, when the party interested in vacating it had no notice of such proceeding. Regulations prescribing the period within which proceedings shall be objected to, necessarily suppose a notice to the party thus restricted by the limitation of time.

The same observations apply to the failure of the appellants to object to the refusal of the commissioners to apportion to joint district No. 6 its proper share of the public money. It does not appear that the trustees had any notice of that proceeding until they made application for the money, to which they considered the district entitled; and it is sufficient that the appeal was made within thirty days after the facts came to their knowledge.

The course of the commissioners of Barrington appears to the Superintendent to have been irregular from beginning to end.—They will find in the law no authority for depriving a school district of its share of the public money, because the trustees have not made an accurate report. If the commissioners believed that the trustees of joint district No. 6 had made a false

report, with the intent of procuring for the district more than its just proportion of the public money, they should have commenced a prosecution for the penalty annexed to the offence by sec. 96, page 485, 1 R. S. If they deemed the report merely inaccurate, without any intention to defraud, they should have reserved the money, to which the district was entitled, until the trustees had an opportunity of correcting the error. If a school district has forty scholars, and the trustees report forty-five, the district ought not to be deprived of its public money, nor should its equitable rights be disregarded. It should receive so much as its actual number of children entitle it to; and the trustees should be prosecuted for rendering a false report, unless the error was unintentional, in which case an opportunity should be given to correct it.

Upon a full view of all the circumstances of the case it is decided, that the proceedings of the commissioners of common schools of the town of Barrington, in annexing to school district No. 8, certain inhabitants belonging to joint district No. 6 in Barrington and Tyrone, on the 5th January, 1833, were void and of no effect, and that said inhabitants still belong to said joint district.

And it is ordered, that the commissioners of common schools of said town of Barrington do apportion to said joint district, out of the next public moneys which shall come into their hands the sum which said district should have received on the first Tuesday of April last, according to the principles of this decision.

This order is not intended to prevent such transfer of the inhabitants of joint district No. 6 to district No. 8, Barrington, as the convenience of the former or the interest of the latter may require. No alteration, however, can be made, except with the concurrence of the commissioners of Tyrone. Should the latter refuse, on application to them, to do what justice requires, an appeal may be made to the Superintendent, and he will take care that the rights of the parties are not prejudiced by such refusal.

The Trustees of school district No. 2 in the towns of Italy and Prattsburgh, *against* the inhabitants of said district.

Illegal votes not affecting the result do not render proceedings void. Commissioners cannot give a second notice for the organization of a new district where a meeting has been held and officers chosen under the first notice.

The facts of this case are given in the Superintendent's order.

By JOHN A. DIX, *June 13, 1834.* On the 8th of March last, the taxable inhabitants of school district No. 2 in the towns of Italy and Prattsburgh, at a meeting held for the purpose of organizing said district, proceeded to the election of district officers, and fixed a site for the school-house. The site was selected by a vote of thirteen to nine. Adjourned meetings were held on the 15th and 29th March, and on the 19th April, for the purpose of making arrangements to build a school-house, furnish it with necessary appendages, &c. At the meeting last mentioned, a contention arose as to the legality of the proceedings of the meeting on the 8th March, on account of certain votes alleged to have been given by persons not qualified to take part in said proceedings. Of these votes two were said to have been given in favor of, and one against the site selected. In consequence of this objection to the proceedings of the 8th March, application was made to the commissioners of common schools to renew their notice for a meeting to organize the district, and to treat the previous proceedings as null and void. The notice was given by the commissioners pursuant to the application to them, and on the 29th April a meeting was held, new district officers with one exception were chosen, and another site fixed for the school-house. To these proceedings certain inhabitants object, on the ground that the first meeting was legal notwithstanding that illegal votes were given as alleged. The appeal has been regularly served on the parties interested in sustaining the proceedings of the last meeting and noticed for a hearing on the fourth of June. No answer having been received, the case is now decided on the testimony produced by the appellants.

The first question to be determined is, whether the alleged illegal votes, if given as is stated, would have rendered the proceedings of the meeting on the 8th March void.

The rule is well settled that proceedings will not be vitiated by illegal votes unless a different result would have been produced by excluding such votes. If the illegal votes could not by possibility affect the result, the proceedings, in relation to which they were given, will not be disturbed on account of such votes. In this case there were thirteen votes in favor of the site selected and nine against it. Deducting from the former the two illegal votes alleged to have been given, and there would still be a majority of two votes in favor of it. The result would have been the same, whether the illegal votes had been taken or not. There is no pretext, therefore, for disturbing the proceedings for the reason assigned; and the act complained of on the part of the commissioners of common schools, with a view to annul them, was wholly unauthorized and void. In undertaking to renew the notice to the inhabitants to hold a meeting for the

purpose of re-organizing the district, re-appointing district officers and selecting a new site, the commissioners have altogether mistaken and exceeded their powers. The only cases in which such a notice could be lawfully renewed, are those specified in sec. 57, page 477, 1 R. S. that is, where the inhabitants refuse or neglect to assemble on the first notice, or where a district having been formed and organized, is afterwards dissolved, so that no competent authority exists therein to call a special district meeting. Neither of these cases have occurred, and the commissioners had, therefore, no authority to act.

If any person was aggrieved by the proceedings of the meeting on the 8th March, he should have appealed to the Superintendent of Common Schools for redress, and there would be no just cause of complaint if in setting aside the proceedings of the 29th April no opportunity should be given to reconsider those of the 8th March.

The right of the inhabitants to review their proceedings, so far as to change the site selected for the school-house, was perfect. The act of Feb. 17, 1831, provides that "whenever a school-house shall have been built or purchased for a district, the site of such school-house shall not be changed," &c. except in a certain manner. In this case a school-house had neither been built nor purchased, and the taxable inhabitants had an undoubted right to change, by a majority of votes, the site originally selected. But as the meeting on the 29th April was illegally called by the commissioners and cannot, therefore, be sustained, and as the site may have been fixed at the first meeting without due deliberation, the Superintendent deems it due to a regular observance of the requirements of the law, as well as to the best interests of the district, which are intimately connected with a judicious selection of a site for a school-house, to submit the question again to the inhabitants.

It is accordingly decided, that the proceedings of the meeting held on the 29th April aforesaid are void and of no effect, and that the officers chosen on the 8th March are the proper officers of said district No. 2. And it is ordered that the trustees of said district proceed forthwith to call a special meeting of the inhabitants for the purpose of considering whether any change ought to be made in the site of the district school-house.

John Owens, *against* the Commissioners of Common Schools of the town of Galen.

If a district fills a vacancy in the office of trustee after one month, by an election, the election is valid, and the commissioners cannot at a subsequent time make an appointment to the same vacancy.

The facts of this case are fully stated in the Superintendent's decision.

By JOHN A. DIX, *June 14, 1834.* On the 14th day of March last Joseph Pettis, one of the trustees of school district No. 12 in the town of Galen, Wayne county, removed from said town; and on the 11th of April ensuing the two remaining trustees called a special meeting, for the purpose of filling the vacancy occasioned by his removal.

On the 17th of April the meeting was held, in pursuance of the notice given by the trustees, and John Owens was duly elected to fill the vacancy occasioned by the removal of said Pettis.

On the 28th of April the commissioners of common schools of Galen, having been applied to for the purpose, appointed John Richmond a trustee to fill said vacancy, on the ground that John Owens was not elected within one month after the removal of Pettis, and that his election was consequently void. From this proceeding John Owens appeals.

The Superintendent is of opinion that the election of Owens was valid. The right of the commissioners to make an appointment at any time after the expiration of one month, and before the inhabitants had filled the vacancy by election, was perfect. But it was necessary, in order to give validity to the appointment, that the power conferred on them should be exercised previously to any action in the premises on the part of the district. The intention of the law was to provide for supplying vacancies, in case it were not done in the usual manner; and it was for this reason only that a conditional authority to fill them was conferred on the commissioners. The trustees should have provided for an election within one month after the occurrence of the vacancy; but the Superintendent deems it inconsistent with the spirit of the elective system as well as the intention of the common school acts, to construe the limitation of time into an absolute forfeiture of the right of choice. The forfeiture would have been absolute if the commissioners had made an appointment after the lapse of a month and before an election by the district; but they neglected to do so, and as the action of the district was not inconsistent with any positive prohibition, the proceeding must be sustained.

It is therefore ordered, that the election of John Owens be confirmed, and the appointment of John Richmond be, and it is hereby declared to be null and void.

The Trustees of school district No. — in the town of Warren, *ex parte*.

The power of inspectors over the course of studies in schools should, ordinarily, be confined to a general supervision of such studies.

This was an application from the trustees of a school district in the town of Warren, for the Superintendent's directions, in a case where the inspectors, in examining into the condition of the district school, had given special directions as to the number of hours during which individual children should be instructed in particular branches.

By JOHN A. DIX, June 30, 1834. The inspectors of common schools are expressly authorized by law to "give their advice and direction to the trustees and teachers of such schools, as to the government thereof, and the course of studies to be pursued therein." This authority cannot very well be limited in its exercise by any general rules. If it should be abused in such a manner as to oppress the teacher or the scholars, the Superintendent of Common Schools has unquestionably the right, on application to him, to inquire into the facts and redress their grievances; and I should deem it my duty to institute such an inquiry, on a complaint regularly made in the manner specified by the regulations of the Superintendent.

With regard to the extent of the inspectors' authority, this can only be determined in each case, with a reference to the attending circumstances. The intention, however, so far as it can be gathered from the language of the law, was to give them a general supervision of the course of studies; and I think they should not, in ordinary cases, consider themselves called on to regulate mere details. Whether a child should read in one book or another, or write one line or six per day in his copy book, are matters which should be left to the teacher. The functions of the inspectors are of a higher order, and they should be content with exercising them according to the spirit of the law, from which their authority is derived. If the teacher is incompetent or unworthy of his place, they may annul his certificate; but they ought not to strip him of all authority by entering into the little arrangements of his school, and undertaking to determine the ability of each scholar to accomplish the particular task assigned to him. I do not wish to be understood, however, as intimating that the inspectors may not, in case of any error on the part of the teacher in this respect, point out and require him to correct it. The propriety of their interference must, as I have already observed, depend on the circumstances of the case. But ordinarily their duty would consist in a general supervision of the govern-

ment and course of studies established in the schools within their jurisdiction.

The Trustees of school district No. 15 in the town of Cicero, against the Commissioners of Common Schools of said town.

When defective reports are made by trustees of school districts, commissioners should give time to correct them, and retain a portion of the public money in their hands to abide the result of such correction.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *June 30, 1834.* On the first Tuesday of April last the commissioners of common schools of the town of Cicero apportioned the public moneys allotted to said town among the school districts therein. From this apportionment school district No. 15 was excluded, in consequence of the omission of the trustees to state in their annual report for 1833 the time, during which their school had been taught by a qualified teacher. Although the commissioners acted strictly according to law, in withholding the money from district No. 15, by reason of the defect referred to, they should have retained the money in their hands to be distributed ultimately among the other districts in the town, or to be given to No. 15, in case the trustees on notice to them, had satisfied the commissioners that the mistake was inadvertent. The commissioners will see, on reflection, the propriety of affording time to make explanations, where any doubt exists with regard to the defects which frequently exist in the reports of school districts, by adverting to the course which has been pursued in the present case. The trustees have made oath that the error was unintentional, and that their school was actually taught six months during the year 1833 by a qualified teacher. But in order to remedy the defect, and procure their proper share of the public money, they are under the necessity of making application to the Superintendent of Common Schools; and will, perhaps, be deprived of the benefit of the common school fund for a whole year. Although the commissioners have acted strictly according to the letter of the law, they might in equally strict accordance with its spirit have avoided the inconveniences referred to by retaining the money, and making its eventual application dependent on the testimony of the trustees, with regard to the exceptionable part of their report. These remarks are not designed to censure the course pursued by the commissioners, but merely to intimate that they may, in the exercise of that guardianship over all the districts within their jurisdiction with which the law has clothed them, spare themselves, as well as the districts, in-

convenience by supposing unintentional error in returns, which are on their face defective.

It is ordered that the commissioners of common schools of Cicero pay to the trustees of school district No. 15 in said town, out of any public moneys now in, or which shall hereafter come into, their hands, such sum as said district would have been entitled to receive in April last, if the report of the said trustees for the year 1833, had set forth that a school had been regularly taught in said district six months during the year by a qualified teacher.

The Trustees of school district No. 2 in the town of New-Lisbon, *ex parte*.

When the site of a school-house has been fixed, it may be changed by a majority of votes at any time before the school-house is built or purchased.

A site for a school-house was fixed by vote of the inhabitants of school district No. 2 in the town of New-Lisbon; but, before the school-house was built, a special meeting was called, and the site was changed to another place by the votes of a majority of the inhabitants. The question raised in this case was, whether the site, having been once selected, could be changed by a majority of votes.

By JOHN A. DIX, *July 5, 1834*. A majority of the inhabitants of a school district may fix the site of the school-house where there is none, to which the district has a legal title, and a majority may change it at any time before the school-house has been purchased or built. No school-house having been built in this case, and the district being without one, the resolution changing the site by a majority of votes was legal.

The Trustees of school district No. 3 in the town of Clayton, *ex parte*.

Trustees cannot sue an associate trustee for neglecting to discharge the duties of his office.

In this case one of the trustees of a school district wholly neglected to perform the duties of his office, though not having refused to accept it. The two associate trustees commenced a suit against him for the penalty provided in such cases, but a question having arisen as to their right to bring the action, the Superintendent's opinion was solicited by them.

By JOHN A. DIX, *July 14, 1834*. I am of opinion that the 109th sec. page 487, 1 R. S. gives the trustees of common schools no power to sue an associate trustee for neglecting to perform his duties. This case appears to me to be one not ex-

pressly provided for, and therefore, comes within the provisions of the 8th sub. of sec. 20, page 470, 1 R. S. The suit must therefore be brought by the commissioners of common schools.

The Trustees of joint school district No. 2 in the towns of Fishkill and Poughkeepsie, *ex parte*.

When an old school-house is sold and a new one built, a district cannot raise by tax \$400 in addition to the avails of the sale of the old house.

Persons authorized to vote for district officers, may vote for a tax though they may not be liable to be assessed for it.

In joint school district No. 2 in the towns of Fishkill and Poughkeepsie, a tax of \$400 was voted to build a new school-house. The trustees were then authorized to sell the old house and to apply the proceeds of such sale, together with the \$400 to be raised by tax, to the erection of the new building. The opinion of the Superintendent as to the validity of this proceeding was requested; and also as to the right of persons, not liable to be assessed for a tax, to vote for it.

By JOHN A. DIX, July 15, 1834. I am of opinion that you cannot raise four hundred dollars in addition to the avails of the sale of the old school-house, for the purpose of building a new one, without first obtaining the consent of the commissioners of common schools. The intention of the law is clear, and wherever taxation is in question it must be strictly followed. If more than \$400 is necessary, the commissioners can say so by giving it as their opinion that a larger sum will be required, which sum they must specify. The most simple mode of proceeding would be to sell the old school-house, and after ascertaining the amount of the avails, vote the requisite additional sum. But, if such requisite sum, together with the avails of the sale exceeds \$400, the certificate of the commissioners must be procured agreeably to the provisions of sec. 64, page 479, 1 R. S.

When the site of a school-house is changed the avails of the sale of the school-house, and of the site on which it stands, must, by the act of Feb. 17, 1831, be applied to the payment of expenses in procuring a new site, erecting a school-house, &c. This provision is to be taken in connexion with the 64th section of the act relating to common schools, and the avails of every such sale must go to the reduction of the amount which the inhabitants of a district may vote under the section referred to. There is no hardship in this construction of the law. If a greater sum is required, it is only necessary to apply to the commissioners of common schools to certify that it ought to be raised.

All persons entitled to vote for the election of school-district

officers may vote for a tax for school district purposes, even though they may not be liable to be assessed for it.

The Commissioners of Common Schools of the town of Rockland, *ex parte*.

A commissioner of common schools is answerable only for moneys which come into his hands.

In the year 1833, the collector of the town of Rockland paid the moneys levied upon the town for common schools to one of the commissioners and took his receipt. The commissioner soon after receiving the money, absconded with it; and his two associates requested the opinion of the Superintendent as to their liability for the sum thus abstracted.

By JOHN A. DEX, *July 15, 1834*. I have received your letter, desiring to know whether you can be held answerable for moneys paid to one of your associates and lost in consequence of his running away. You are answerable only for such moneys as have come into your hands. If the moneys referred to were paid directly to him as a commissioner of common schools by the town collector, the town has no remedy either against you or the collector for it. The defaulter is alone responsible.

The inhabitants of joint school district No. 11 in the town of Deerfield, and No. 14 in the town of Marcy, *ex parte*.

The Superintendent has only an appellate jurisdiction in the formation and alteration of school districts.

This was an application to the Superintendent to divide a school district and form a new one, without any previous application to the commissioners of common schools.

By JOHN A. DIX, *July 16, 1834*. The right of the Superintendent of common schools to form or alter school districts, arises only in cases of appeal from the decisions of the commissioners of common schools, to whom the power is given by law in the first instance. Application must be made in this case to the commissioners of common schools of the two towns, and if they refuse to act, or if they make the alteration and any person shall think himself aggrieved by their proceedings, an appeal may be made to the Superintendent.

(ANONYMOUS.)

Trustees cannot reassess a tax to make up a deficiency on account of the inability of an individual to pay his portion; nor can they make out a new rate bill in such a case.

By JOHN A. DIX, *July 17, 1834.* The trustees of a school district have no right to reassess a tax upon the inhabitants where the collector has been unable to collect the whole amount on the tax list put into his hands. In case of a rate bill to pay teachers' wages, the trustees may exempt such of the inhabitants as they may consider unable to pay. But the rate bill having been put into the hands of the collector, they cannot recall it the purpose of making new exemptions. If, however, any of those for who have been included in the rate bill prove unable to pay, the trustees would undoubtedly be justifiable in paying the deficiency out of any public moneys in their hands, unless those moneys have been expressly appropriated by a vote of the district to a particular term of the year. In this case the inhabitants may be called together and vote so much of the money thus appropriated as is necessary to be applied to that object.

In case of a tax list to raise money to build a school-house, furnish it with fuel, &c., the inhabitants have full power to vote a new tax to make up any deficiency occasioned by the inability of an individual to pay his proportion where there has been no default on the part of the collector, and may, therefore, save the trustees harmless on their contracts for the construction of the house, &c.

It is only in these modes that the deficiencies referred to can be supplied. The law gives no express authority to trustees to reassess any part of a tax, and they cannot take it by implication. Although such an authority is sometimes desirable, yet it would be liable to abuse, and would be likely to lead to great negligence on the part of trustees. On the whole the law is, I think, better as it stands. If trustees are prompt, vigilant and judicious in their arrangements, they will rarely find themselves involved in difficulty; and in the few cases of unavoidable embarrassment, which may occur from the causes referred to, a remedy will generally be found in the course above indicated.

The Trustees of school district No 4 in the town of Alexander, *ex parte*.

Notices for special meetings must be in writing.

A written notice given by the clerk of a district in pursuance of a verbal direction from the trustees is good.

The proceedings of a meeting held without any attempt to give a legal notice are not valid.

In this case the trustees of school district No. 4 in the town of Alexander, directed the clerk verbally to call a special meeting of the inhabitants. The notices were given verbally, and in every case but one, more than five days before the time appointed for the meeting. The meeting was held accordingly, but several of the inhabitants were absent. The question submitted was, whether the proceedings of the meeting held in pursuance of such a notice were valid?

By JOHN A. DIX, *July* 31, 1834. A notice to the inhabitants of school districts to attend a special meeting must be in writing, and it must be read in the hearing of each inhabitant qualified to vote, or in case of his absence, a copy of so much of the notice as relates to the time and place of meeting must be left at the place of his abode at least five days before the time of the meeting. See sec. 56, and sub. No. 2 of sec. 74, of the statute entitled "Of common schools."

If the trustees of a school district give a verbal direction to the clerk to call a special meeting, and the clerk prepares and serves a written notice in the manner above prescribed, it is sufficient, and the proceedings of the meeting held in pursuance of such notice will be deemed valid precisely as though the trustees had given a written direction to the clerk.

If the clerk undertakes to give a notice in the manner provided by the statute, and has failed unintentionally to serve it on all the persons entitled to receive it, the proceedings of the meeting are not, by reason of such failure, void. Sec. 63 of the statute above referred to, provides that "the proceedings of no district meeting, annual or special, shall be held illegal for want of a due notice to all the persons qualified to vote thereat, unless it shall appear that the omission to give such notice was wilful and fraudulent." This provision was intended for cases where through accident or mistake the proper legal notice is not given to all who are entitled to it; but it cannot be construed to extend to cases in which no attempt is made to give the notice required by law to any of the inhabitants. If notice is given verbally, and all attend, the defect is not cured by such attendance: the persons so meeting are not legally assembled, and they are wholly without authority to act. A notice for another meeting should be given, and all proceedings under the meeting which has been held should be abandoned.

(ANONYMOUS.)

A tax to build a school-house cannot be expended until a site is chosen and a title to it obtained.

Promissory notes should not be taken for taxes.

By JOHN A. DIX, August 2, 1834. Trustees of school districts have no right to apply money raised by tax for the construction of a school-house to the object in view, until a site has been chosen by vote of the inhabitants; nor should the money be expended until a clear undisputed title to the site has been obtained. If there are liens on the property, they should be removed before any expenditure is made.

Promissory notes given for taxes are altogether unauthorized by law. The collector, on receiving a warrant from the trustees, should proceed at once to execute it. There is no excuse for deviating from the requirements of the law, and if officers of school districts take upon themselves to pursue courses not authorized, they will be personally responsible for any loss which may result to the districts in consequence of such departure from prescribed rules of proceeding.

(ANONYMOUS.)

Trustees are unwarrantable under the general authority to employ all teachers, if they refuse to employ any, and thus deprive the district of its public money.

By JOHN A. DIX, September 2, 1834. The trustees of school districts are invested by the statute with the authority of contracting with and employing all teachers; and they may, under this general authority, discontinue a teacher even though he may be properly qualified. If they violate their contract with him they will be answerable in damages; but this is a question between them and the teacher. The right to employ a teacher, however, is not to be construed to authorize the trustees to refuse to employ any teacher whatever, and thus deprive the district of a school altogether. It is their duty to see that a school is kept as the law intends.

The Commissioners of Common Schools of the town of Deerfield, *ex parte*.

Commissioners of common schools must furnish answers to appeals brought from their decision in refusing to alter a school district. Notice must be given to the real parties in interest, where the commissioners of common schools take no pains to sustain their proceedings.

This was an application for the direction of the Superintendent as to the duty of the commissioners of common schools with regard to answering an appeal in a case where they had refus-

ed to divide a school district and an appeal had been brought from their decision.

By JOHN A. DIX, *September 2, 1834.* Where the commissioners of common schools refuse, on application to them, to alter a school district, they ought, in case of appeal, to make the statements required by the regulations. The regulations being established by the Superintendent of Common Schools under the authority conferred on him by law, are to be deemed a part of the law itself, and are equally binding on all concerned. Although the commissioners may not in the case referred to by you, be real parties in interest, it is manifest that they must be parties to the appeal which is brought from their decision; and it is their duty, therefore, to furnish an answer to it. The reasons of the commissioners for refusing to act, constitute their answer to the appeal. If the appellants furnish a map of the district, the accuracy of which is not disputed by the commissioners, the latter need not furnish another, but their assent to its accuracy will be considered, so far, as an agreement upon the facts of the case. Where the commissioners have taken no pains to sustain their decisions, the Superintendent has required persons appealing from such decisions to give notice of the appeal to the real parties interested in resisting it, in order that the whole matter may be fairly and fully presented to him; and in such cases statements under oath have been received from the parties last referred to.

(ANONYMOUS.)

Trustees may sue for trespass in case the district school-house is forcibly entered without their consent.

By JOHN A. DIX, *September 5, 1834.* Trustees of school districts have by law "the custody and safe keeping of the district school-house," and they may sue for trespass if it is forcibly entered without their consent. The power is not expressly conferred on them by statute, but it is necessarily implied in the authority above given, as well as in that of holding district property "as a corporation," for they cannot hold it without the power to defend the possession. Indeed the general maxim of law, which gives to persons charged with the custody of property, the right to protect it and recover damages for injuries it may have sustained, is a sufficient foundation for the exercise of the power. The trustees, being invested with the custody and safe keeping of the house, must be deemed to be actually and lawfully in possession of it; and they have, therefore a right to bring an action against intruders.

The Commissioners of Common Schools of the town of Gorham, *ex parte*.

Commissioners of common schools must make an annual account in writing to their successors in office of all school moneys received and expended by them.

A transfer of vouchers is not a sufficient account.

If commissioners neglect to account, they may be prosecuted by their successors.

In the town of Gorham one of the commissioners of common schools in office in the year 1833, was re-elected in 1834, and two new ones were chosen. The one, who was re-elected, removed soon afterwards from the town. The commissioners, whose term of office expired in 1834, rendered no account of the school moneys received and expended by them, but offered to hand over to their successors the receipts of the trustees of school districts for moneys paid to them. The direction of the Superintendent was requested as to the proper course to be taken to compel them to account in writing.

By JOHN A. DIX, September 17, 1834. Under section 35, page 473, 1 R. S. it is the duty of the commissioners of common schools to render to their successors in office "a just and true account" of all moneys received and expended by them. This account must be "in writing," according to the requirements of the same section. Now it must be obvious that a mere transfer of vouchers or receipts is not a sufficient compliance with the requirement of the law. There should be a written statement of the amount of moneys received, appropriated and expended by the commissioners during their term of office. This statement or account must "be filed and recorded" in the office of the town clerk: and whether one or all of the persons in office are re-elected, the rule is equally applicable. The account must be made out, filed and recorded in the same manner as if different individuals were elected. The intention of the law is, that there shall be on record in the clerk's office a regular account of the pecuniary transactions of the commissioners in each year: and a compliance with this requirement can in no case be dispensed with.

If commissioners of common schools, at the expiration of their office, neglect to make or render an account as aforesaid within the time limited by law, it is the duty of their successors to prosecute them under section 39, page 474, 1 R. S.

In the case mentioned in your letter, I should recommend that this reply should be shown to your predecessors, and if they make out an account promptly, the delay should be overlooked. But if they refuse, they should be prosecuted. In this case there must be a separate suit against each commissioner, as the penal-

ty is separate. You may sue one or two or three as you choose. It would be most proper to sue both of the two, who were not re-elected. As the other has removed, you may not be able to reach him. The suits must be brought in the name of yourself and your associate commissioner. The third having removed from the town has ceased to be a commissioner.

John Owens, a trustee in school district No. 12 in the town of Galen, against his associate trustees.

One trustee cannot open a school in pursuance of a vote of the district, nor can the other two trustees open a school until the inhabitants have designated the place, if there is no school-house in the district.

The facts of this case are stated in the Superintendent's decision.

By JOHN A. DIX, *September 24, 1834.* On examination of the appeal of John Owens, one of the trustees of school district No. 12 in the town of Galen, from the proceedings of his associate trustees in relation to a school set up by the two latter, it appears that two schools have been kept in the district, one at the house of Mr. Daniel Burnet, under the direction of Seth Brown and Silas Brown, two of the trustees, and the other at the house of Mr. Tibbits, under the direction of the appellant. It is alleged by the latter that he employed a teacher and set up this school in pursuance of a vote of the inhabitants of the district called under a notice from a majority of the trustees. It is alleged by the two other trustees that this meeting was not legal, and that they as the majority had full power to engage a teacher and open a school wherever they should think proper.

The Superintendent is of opinion that there has been an improper exercise of authority on both sides. In the first place Owens had clearly no right, without the consent and co-operation of one of the other trustees, to open a school or do any other act in relation thereto notwithstanding the vote of the district; for if that vote was given upon a fair submission of the question, a majority of the trustees should have concurred in executing it. On the other hand, if a school district has no school-house, the trustees cannot open a school until the inhabitants have designated the house, in which it shall be kept, or given the trustees a discretion as to the selection of a place for it. The trustees should have submitted this question to the district, and in acting without authority after a meeting had been called pursuant to a notice signed by one of them, they have made themselves responsible to the teacher for his wages, and have contributed to keep up a controversy, which should have been put at rest by a fair vote of the inhabitants. Under these circum-

stances, both parties must provide for the payment of their teachers as they can; for the public money cannot properly be paid to either. If the two Messrs. Browns have paid over any part of the public money to their teacher, they will be personally answerable for it. The teachers have their remedies against those who have employed them; and if their wages are not paid, they can be collected by a suit at law. It will be the duty of the trustees to call a meeting of the inhabitants on the receipt of this order, for the purpose of determining by vote, where a school shall be opened, so that the public money can be expended before the first of January next.

It is accordingly ordered, that neither of the schools which have been kept as aforesaid in district No. 12 are to be considered as legally organized district schools, and that neither of the teachers be paid any portion of their wages out of the public moneys of said district.

(ANONYMOUS.)

Contracts by trustees of school districts for teachers' wages are binding on their successors in office.

By JOHN A. DIX, *September 26, 1834.* Contracts for teachers' wages, made by trustees of school districts, are binding on their successors. See 7th vol. Wendell's Reports, page 181. Trustees not in office are not, under the decision of the supreme court to which I have referred, personally answerable.

If a judgment is recovered against the trustees in office the amount must be allowed in their official accounts. See 2 R. S. sec. 108, page 476. The 43d decision of the Superintendent of Common Schools, heretofore published with the school laws, requiring trustees of school districts to fulfil their own contracts, is intended for their government; and in all matters coming regularly before him the rule will be enforced, so far as it can be done without affecting the rights of third persons.

The Trustees of school district No. 3 in the town of Ellicottville, *ex parte.*

The personal property of a minister of the gospel is exempt from taxation; but if the value of his real estate exceeds \$1,500 he may be taxed for the excess.

In this case a minister of the gospel, owning a large farm, claimed to be wholly exempt from taxation for school district purposes, and the opinion of the Superintendent was requested as to his liability.

By JOHN A. DIX, *November 3, 1834.* By subdivision 8 of section 4, 1st vol. Revised Statutes, the personal property of eve-

ry minister of the gospel, or priest of any denomination, is exempt from taxation; and so is his real estate, when occupied by him. But the exemption as to the latter does not extend beyond the sum of \$1,500. If your clergyman is worth more than that sum, he may be taxed on the excess. The law has settled this matter so clearly that no question can arise in relation to it, so far as the extent of the exemption is concerned.

The Trustees of school district No. 1 in the town of Edwards, *ex parte*.

Taxes must be collected in the mode prescribed by law.

In this case a tax of \$200 was voted to build a school-house, with the condition annexed that it should be paid in grain at the end of a year. The trustees of the district entered into a contract with a builder, who agreed to erect the house and take his pay in the manner and at the time above mentioned. The year having expired, and the trustees being desirous of fulfilling their contract, undertook to provide the amount of grain stipulated to be delivered to him; but several of the inhabitants refused to furnish their proportion. Under these circumstances the Superintendent was desired to state whether the tax could be collected in money or otherwise.

By JOHN A. DIX, November 11, 1834. The proceedings of the meeting in your school district in October, 1833, at which a tax of \$200 was voted to build a school-house, were not in conformity to the provisions of the law, and cannot, therefore, be enforced. When a tax is voted for school district purposes, the law indicates the mode in which it shall be assessed and collected; and no vote of the inhabitants, which contravenes these provisions, is of binding force. A vote to pay a tax in grain at the end of a year is wholly unauthorized and void. The district is fairly indebted to the builder for the amount of the contract; and if the inhabitants do not pay him voluntarily, in the manner agreed on, a tax should be voted, at a special meeting to be called for the purpose. This matter may be easily arranged among yourselves, if you are so disposed; but if you cannot agree, and a recourse to legal measures, on the part of the builder, becomes necessary, he must recover the amount justly due to him.

The Trustees of school district No. 20 in the town of Boonville, *ex parte*.

The ownership of the soil carries with it a right of property in permanent erections on it: but if a school-house is built by subscription, on a site purchased by a district, a tax may be voted to purchase the house.

In this case a school-house was commenced by subscription, on a lot to which a title was expected to be given by the owner. In consequence of some controversy among the parties the house was not finished; but at a subsequent period a tax of \$70 was voted by the district to purchase the site and finish the house. The amount voted was raised and expended, and the lot on which the school-house was built was conveyed to the district. The question submitted to the Superintendent was whether a tax could be voted to reimburse those who had partially constructed the house, and whether such a measure would be equitable.

By JOHN A. DIX, *November 10, 1834*. The rule of law is that the right of property in all permanent erections upon land resides in the owner of the soil; and, therefore, the district having purchased the ground on which the school-house stands becomes the legal owner of the latter. Equitably, however, each of the parties who have contributed to its construction have an interest in it commensurate with their respective contributions. It seems no more than just, if the district intends to appropriate the house to its own use, that it should pay a fair price for it. The inhabitants have a perfect right to vote a tax to purchase it; and the sum raised should be paid to those who have built it. The tax should, of course, be levied on all the inhabitants, without regard to the fact that some had subscribed and others had not; and as the amount collected would go to those who had paid their money for its construction they would in effect be reimbursed, and would, therefore, only contribute, to the extent of their respective portions of the tax, to the purchase of the house. Thus would equal justice be done to all, and the district would purchase and pay for the house, as it ought to do.

In some cases school districts have been formed with the understanding that a sum is to be raised by subscription to pay for a school-house, and that the inhabitants are not to be taxed for the purpose. Such arrangements are almost always objectionable and rarely fail, soon or late, to produce dissention. But if there was such an understanding with you it ought to be executed in good faith; and the district should be deemed the owner of the school-house. But this should be the fruit of an amicable arrangement, as it is one of those cases in which the provisions of the law have not been followed in the first instance, and in

which the parties have acted upon a mere private understanding among themselves.

If no understanding whatever of the nature referred to existed the district should pay for the house. In this case a special meeting of the inhabitants, for the purpose of laying a tax, may be called by the trustees.

The Trustees of school district No. — in the town of Antwerp, *ex parte*.

Where improvements in real estate have been made and completed since the last assessment roll of the town was made out, the roll is not to be followed, so far as such real estate is concerned.

In this case a tax was voted to build a school-house, and it appeared that improvements in several instances had been made in real estate by new erections between the time of completing the last assessment roll of the town and the time of voting the tax. One of the inhabitants had built a barn, which was completed; another had commenced a tannery, and a third a dwelling-house, which, however, were unfinished. The question presented was, whether the last assessment roll of the town should be followed in either or all these cases.

By JOHN A. DIX, *December 8, 1834*. Where improvements have been made in real estate in school districts since the completion of the last assessment roll of the town, it is one of the cases in which the value of the property cannot be ascertained by a reference to the assessment roll. If the property remains in the same condition, the trustees cannot vary the assessment because they may think it too low. But if a new erection is made, and the property actually enhanced in value by an expenditure of money in such a manner that the improvement is capable of a distinct valuation, the trustees may give notice and assess the property at its increased value. But this should not be done where the improvement is not complete. The case of the barn I consider within the rule above laid down, but not so with the other improvements, which are incomplete. The reason of the distinction is obvious, as in one case the valuation of the subject matter may be reduced to certainty, and in the other it must derive its principal value from its completion, which is contingent and future.

The Trustees of school district No. — in the town of Otto, *ex parte*.

A tax may be voted for two authorized objects, without specifying the amount to be raised for each.

If a site is chosen for a school-house and the owner refuses to give a conveyance, a new one may be chosen by a majority of votes.

A new school district was organized, and a site for the school-house chosen. A tax of \$250 was then voted to build the school-house, pay for the site, and to furnish the school-house with a broom, a water pail and cup, a stove and a fire shovel, naming each object of expenditure in the resolution, but not naming a specific sum for each. On application to the owner of the land on which the site for the school-house had been fixed, he refused absolutely to make a conveyance or to allow the school-house to be built on the proposed site. The questions submitted were, whether the tax as voted was legal, and whether a new site could be fixed by a majority of votes.

By JOHN A. DIX, *December 8, 1834*. I consider all your proceedings legal. The articles voted to be purchased for your school-house were all appendages within the meaning of the law, and it was not necessary to vote a specific sum for each object. It was sufficient to vote a specific sum and enumerate the several objects to which it was to be applied, provided the objects were all such as are enumerated in the section of the law which authorizes taxes to be raised in school districts.

The change of site was also proper. The owner of the first site chosen having refused to give a conveyance, it was a failure to procure a title, which placed the district in precisely the same condition as though it had never chosen a site. A majority of votes was all that was necessary to change the position of the school-house.

(ANONYMOUS.)

A tax may be voted to repair a school-house, though the district has no title to the site.

By JOHN A. DIX, *December 9, 1834*. A district may vote a tax to repair the school-house, even though it has no title to the site; but I consider it unwise to expend money on a school-house so situated, as the owner of the land may re-enter and the district may sustain loss as well as inconvenience. If, however, the inhabitants choose to repair the house under such circumstances, they have an undoubted right to do so; and a tax voted for the purpose, in the usual manner, would be legal.

The Commissioners of Common Schools of the town of Vienna, *ex parte*.

Persons annexed to a new district with their consent, may be taxed for a school-house, though they may have paid a tax for the purpose within four years. When persons are annexed to a new district, without their consent, and are not liable to be taxed in it for a school-house, the portion of the value of the school-house in the district from which they are taken allowed to the new district on account of the taxable property of such persons, goes to the benefit of all the inhabitants.

The facts of this case are fully stated in the Superintendent's opinion.

By JOHN A. DIX, *December 9, 1834*. Six individuals are taken from an old district to form a new one, all of whom have contributed to the erection of a school-house within four years. Four consented to be set off and two did not consent. The commissioners of common schools in forming a new district, adjudge forty dollars to be paid to it from the old district, on account of the six persons thus set off, the said sum being the proper proportion of the value of the property of the old district, according to the taxable property of the six individuals set off. The four persons who consented to be set off are liable to be taxed for a school-house in the new district. The two who were set off without their consent, having paid a tax for building a school-house in another district within four years, cannot be taxed.

The question submitted is, whether the four persons who are liable to be taxed are entitled to have the whole sum of forty dollars applied to the reduction of their taxes, (if their taxes for building a school-house in the new district amount to so much,) or whether only so much of the forty dollars as was apportioned to the new district upon the basis of the taxable property of the four persons referred to is to be applied to the reduction of their taxes for a school-house.

The language of the law may seem to favor the former construction, but the equity is plain; and without doing violence to the terms of the several sections applicable to the case, I have no hesitation in giving to it a construction which shall be consistent with equity. It was certainly not the intention of the law, that any individual set to a new district should be benefitted by the amount of the property of the old district awarded to the new beyond his own proportion of such property. Each person, who is set from an old district having a school-house or other property to a new district, may be said to carry into the latter his proportion of the value of such school-house or property, and he is to have the benefit of it to the amount of his tax for a school-house in the new district. But he cannot have the exclusive benefit of that portion of the value of the school-house or property in the old dis-

trict, which is awarded to the new district as the proportion of other persons. If the latter are not, from peculiar circumstances, liable to be taxed for a school-house, their proportion goes to the reduction of the whole tax for a school-house, and enures to the benefit of all the inhabitants of the new district. In this benefit the individual first referred to participates equally with all others, but no farther. If he were to be allowed, by way of reducing his tax, any thing more than was received from the old district on his account, he would acquire a benefit to which he has no more claim than any other inhabitant of the district, and have an advantage over others which could not be recognized without a subversion of that plain rule of equal justice, which it is the intention of the law to maintain inviolate.

I therefore, decide that the four persons who consented to be annexed to the new district, are to have so much of the forty dollars applied to the reduction of their taxes respectively, as was awarded to the new district upon the taxable property of each: and that so much of the forty dollars as was awarded to the new district on account of the two persons, who did not consent to be set off, is to be applied to the reduction of the whole tax voted for a school-house, so that all who are to pay the tax may have the benefit of it.*

The Inhabitants of joint school district No. 13 in the towns of Rome and Lee, *against* the Commissioners of Common Schools of said towns.

If a school district has been recognized as legal for a length of time, regularity in its organization will be presumed in the absence of the proper record, and the commissioners of common schools cannot form the district anew and order an election of officers under such circumstances.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *December 13, 1834.* On the first day of October last the annual meeting was held in joint school district No. 13, in the towns of Rome and Lee, and officers were chosen for the ensuing year. To the regularity of the proceedings, exceptions were taken, and an appeal was presented to the commissioners of common schools of the two towns, who met and decided that they had no power to entertain the appeal. On examination of the records of the towns, it appeared that district No. 13 was not recorded, with a proper designation of boundaries, in either; whereupon the commissioners proceeded on the

* See the case of the trustees of school district No. 13 in the town of Castile, page 64.

first day of November, (that day having been previously appointed for the purpose,) to form a new district by making additions to the district in question, and by making a specification of its boundaries. The district was then put on record in both towns, and a meeting was called in pursuance of the provisions of section 55, page 477, 1 R. S. to choose district officers. The meeting was held on the 12th of November, and district officers were chosen. To this proceeding exception is taken by the officers elected at the annual meeting on the 1st of October.

By an examination of the reports made by the commissioners of common schools of the towns of Rome and Lee, in the office of the Superintendent, it appears that joint district No. 13 has been regularly returned by the commissioners of those towns since the year 1822 as an organized district, lying partly in both towns, and that the public money has been apportioned to it according to law. A recognition of the district for so long a period, cannot with propriety be disregarded in consequence of a failure on the part of the proper officers to have it recorded. It was the duty of the commissioners, on being apprized of the fact, to meet together and declare the boundaries with a view to have them made a matter of record: but it cannot be admitted for a moment, that the omission of the proper officers to comply with provisions of law, which are merely directory, is to vacate proceedings regularly conducted by the competent authority. It is true it does not appear, by the records, that the district was ever regularly organized in the manner prescribed by law; but notwithstanding the statement given by the commissioners with regard to certain proceedings in both towns in setting off a part of each to the other, the Superintendent cannot now permit the original formation of the district to be enquired into for the purpose of invalidating any thing that has been done within it since its organization. After the lapse of twelve years, during which the district has been returned by the commissioners of both towns to the Superintendent of common schools, and has complied with the directions of the statute so as to become entitled to the public money, regularity in its organization will be presumed; and the commissioners will be so far bound by the reports of their predecessors that they will not be allowed to impeach the accuracy of those reports. It has been repeatedly decided that a district, which has been for a series of years recognized as valid, is to be regarded as such, although no record of it can be found; and in such cases the commissioners have been directed, whenever the interposition of the Superintendent of Common Schools has been required, to meet and declare the boundaries of the district, and put them on record. In this case the commissioners have overstepped the limits of their authority, by

treating the district as null, and ordering an election after forming it anew. They had power to annul the district; but without doing so in a formal manner, it could not be reorganized and treated as a new district. They could not give the notice provided for in section 55 before referred to, because it was not a new district; nor could they issue a notice under the provisions of section 57, (same page) because neither of the contingencies, on which the right to issue such a notice is dependent, had occurred. It is alleged that several of the appellants, who were the officers chosen on the 1st of October, were present and acquiesced in the proceedings of the commissioners. Admitting the fact, the difficulty still remains. There was a want of jurisdiction, so far as the order for a new election is concerned, and their consent could not give jurisdiction. They might have resigned, but could not by their consent give validity to any act on the part of the commissioners, not authorized by express provisions of law, which would abridge the period of their election to office. Notwithstanding the error of the commissioners, the Superintendent is well satisfied that they intended to act for the best good of the district, and without any doubt as to the extent of their powers.

It is hereby ordered, that so much of the proceedings of the commissioners aforesaid on the first of November last, as relates to the boundaries of district No. 13 in Rome and Lee, be confirmed, and that said boundaries be continued as established by them on that day. And it is hereby declared, that the proceedings of the meeting in said district on the 12th of November, held in pursuance of the order of the commissioners, are null and void; and that the persons chosen on the 1st of October last are and will continue to be the officers of said district until the next annual meeting, or until vacancies occur.

(ANONYMOUS.)

Certificates of qualification to teach a particular school cannot be given.

By JOHN A. DIX, *December 26, 1834.* Inspectors of common schools have no right, in giving a teacher a certificate of qualification, to be governed by a consideration of the particular circumstances for which it is wanted. The certificate is good for one year to teach any school in the town, unless it is previously revoked; and it would certainly be not only a very inconvenient, but a very erroneous, practice to give a certificate to a teacher to enable him to receive the public money for teaching one school and to revoke it if he undertook to teach another. The law makes no distinction, and the inspectors should not. They must be "satisfied" as to "the qualifications of the candidate in respect to

moral character, learning and ability," not to teach a particular school, but "for teaching common schools" in their town.

The Trustees of school district No. 6 in the town of Rensselaerville, *ex parte*.

If a teacher is examined and the inspectors are satisfied, but neglect to give a certificate at the time, it may be given at a subsequent time and take effect from the date of the examination.

In this case the commissioners of common schools examined a female teacher and expressed their satisfaction with her qualifications, but neglected to give her a certificate at the time. On application to them at a subsequent period of her term, the certificate was given to her. The question presented was, whether she was to be deemed a qualified teacher from the time of the examination or from the date of her certificate.

By JOHN A. DIX, *January 6, 1835.* The teacher in your district should have received a certificate of qualification at the time she was examined; but if the certificate which she received was given upon the strength of the examination in the spring, she ought to be considered a qualified teacher from the date of such examination. The omission of the inspectors to give her a certificate at the time, if they were satisfied with her qualifications, should not be allowed to operate to her prejudice.

(ANONYMOUS.)

The site of a school-house, if actually owned by the district, is a part of its property, subject to appraisement when a new district is formed.

By JOHN A. DIX, *January 6, 1835.* The value of the lot on which a school-house stands, or, as it is usually termed, the site of the school-house, is to be considered as a part of the property of the district, subject to appraisement under section 67 of the act relating to common schools, if the district is divided and a new one formed from part of it. It is to be understood, however, that the site must be the absolute property of the district, and not, as often happens, occupied at sufferance, or on condition of being used as a site for a school-house.

(ANONYMOUS.)

The assessment roll of the town is not complete until it is signed and certified.

By JOHN A. DIX, *January 12, 1835.* The assessment roll of the town is not complete, and cannot, therefore, be considered as the "last assessment roll of the town," until after it is signed

and certified as required by section 26, title 2, of the act for the assessment and collection of taxes.*

**The President and Directors of the Bank of Orleans,
against the trustees of school district No. 1 in the
town of Barre.**

There can be no partnership in the erection of a district school-house.

The facts of this case are stated in the Superintendent's order. By JOHN A. DIX, *January 12, 1835*. The Superintendent of common schools has examined the statement of facts agreed on by the trustees of school district No. 1 in the town of Barre, and the president and directors of the Bank of Orleans, in relation to the assessment of a tax on the property of said district for the purpose of erecting a school-house.

The proposed school-house is intended to be part of a building to be used as an academy as well as a school-house, and the sum of \$2,000 is intended to be raised by subscription to complete it.

Much as the Superintendent is disposed to confirm the proceedings of the inhabitants of the district, by whom they have been adopted with great unanimity, he is constrained to set them aside by a rule, which cannot, in his opinion, be safely departed from in any case, without authority from the legislature. By a decision of the Superintendent heretofore published with the school laws, it is settled that there can be no partnership in the erection of a school-house which will prevent the district from controlling it entirely for the objects of the district school. This principle he feels bound to enforce in all cases which come before him. To sanction a departure from it would establish a precedent which might lead to great embarrassment and possibly to abuse. If in any case the interest of a district should require such an arrangement as is contemplated by the inhabitants of this district, application must be made to the legislature for the proper authority.

The Superintendent deems it proper to add, that he should have confirmed the tax but for the single fact that the school-house is proposed to be united with an academy. The wealth of the district justifies the amount of the proposed expenditure; and it is no objection, in his mind, that a large proportion of the tax falls on a moneyed institution, which not only has the ability but the directors of which express a willingness to contribute to the erection of a school-house for the district.

* For the liabilities of trustees in deviating from the last assessment roll of the town in assessing a tax, see the decision of the Superintendent of December 1, 1835, in the case of the trustees of school district No. 5 in the town of Catlin.

It is hereby ordered, that so much of the proceedings of the special meeting in school district No. 1, on the 23d December last, as authorizes a tax of fifteen hundred dollars to be levied, with a view, as is admitted, to be applied to the erection of a building for a school-house and academy, in pursuance of a resolution passed at a meeting of said district on the 7th October last, be and it is hereby set aside. This decision is not intended to affect the right of the inhabitants of said district, by virtue of the certificate of the commissioners of common schools heretofore given, to meet again and vote the same amount for the purpose of erecting a building to be used solely as a district school-house.

The Trustees and inhabitants of school district No. 20 in the town of Bethlehem, *ex parte*.

The annual election in a school district having been neglected for two years, the Superintendent will order one to be held.

This was an application to the Superintendent by the inhabitants of school district No. 20 in the town of Bethlehem, to order an election of district officers, the annual meeting having been omitted for two successive years. In this application the trustees last elected united.

By JOHN A. DIX, *January 14, 1835*. The annual meeting for the election of officers in school district No. 20 in the town of Bethlehem having been neglected for two successive years, and application having been made to the Superintendent of Common Schools for his direction: It is hereby ordered, that the trustees now serving, viz. G. H. Birch, John P. Brayton and Bretton Udell do proceed to call, at the earliest practicable day, a meeting of the taxable inhabitants of said district No. 20, at some convenient place therein, for the purpose of electing officers for said district for the ensuing year, and for the transaction of such other business as the inhabitants, when so assembled, may deem necessary. The notice will set forth the objects of the meeting, and state that it is called by authority of the Superintendent of Common Schools; and it will be served in the manner required by law when special meetings are called by the trustees. After the election of district officers the time and place for holding the next annual meeting will be fixed by vote of the inhabitants assembled in pursuance of the notice so to be given.

The Trustees of school district No. 1 in the town of Castile, *ex parte*.

No more money can be expended on a school-house than is necessary for common school purposes.

The school-house in district No. 1 in the town of Castile having been consumed by fire, it was proposed by some of the inhabitants to build a house large enough for the purposes of the district school, with one or two additional rooms to be rented for select schools or such other purpose as might be acceptable to the district. The question presented was whether a tax to construct such a building could be legally voted.

By JOHN A. DIX, *January 15, 1835*. The inhabitants of school districts have no right to lay a tax for any amount to be expended on a school-house, excepting what is absolutely necessary for common school purposes. They may have a house with two or more rooms, if such a one is necessary, for the convenience of the district. But the idea of having a room to rent, even for a select school, is wholly inadmissible.

Edmund Baldwin, Jr. and others, *against* the inhabitants of school district No. 11 in the town of Lawrence.

If a school district is broken up, the persons belonging to it are liable to be taxed for a school-house in the districts to which they are annexed, though they may have paid a tax for the same purpose within four years.

Notices for special meetings must be personally served.

The principal facts of this case are stated in the Superintendent's order. The only material point not fully set forth in his order is the ground on which the appellants relied in claiming an exemption from a tax for building a school-house in district No. 11 after the dissolution of the district to which they belonged, and their transfer to the former. This point was in substance that they were set off from the other district without their consent, and that having paid a tax in it for a school-house within four years, they were not liable to be taxed for the same purpose in district No. 11.

By JOHN A. DIX, *January 17, 1835*. This is an appeal by Edmund Baldwin, junior, and others, from the proceedings of a district meeting held on the tenth day of December last, in school district No. 11 in the town of Lawrence, at which meeting a tax of \$318.50 was laid for building a school-house, &c.; and also from the proceedings of the trustees of said district, in assessing the appellants for their portion of said tax.

The principal grounds on which exception is taken to the proceedings before mentioned are the following:

1st. That the appellants have, within four years, paid a tax towards building a school-house in another district, from which they were set off without their consent; and,

2d. That the meeting on the 10th of Dec. ult. was not called in pursuance of the notice required by law.

The last exception is well taken, and the proceedings must be set aside on this ground. In calling meetings for special objects the trustees of school districts should pursue the directions of the statute strictly. This observation applies most emphatically to cases in which the object of the meeting is to impose a tax. The notice should properly specify the object of the meeting; but it is indispensable that it should be personally served, as is required by sub. 2, of sec. 74, and by sec. 56 of the act relating to common schools. The notice for the meeting on the tenth Dec. was in proper form, as appears by the affidavit of the clerk, but instead of being served on each taxable inhabitant, it was merely posted up as in the case of an annual meeting or a meeting adjourned for a longer time than one month. The notice was not sufficient, no attempt having been made to give it in the manner required by law; and a new meeting must be called, and the tax voted again before it can be collected.

The case being thus disposed of, it is unnecessary, for the purposes of this decision, to consider the first ground of objection. But to avoid future embarrassment it is proper to say that the Superintendent deems it wholly untenable, if, as is alleged, the appellants became inhabitants of district No. 11 by virtue of the dissolution of district No. 8 under an order of the commissioners of common schools. The provision of law which exempts from the payment of a tax for building a school-house individuals who have, within four years, paid a tax for the same purpose in another district, from which they have been set off without their consent, is not applicable to cases in which a district is wholly broken up, and the inhabitants who composed it are arranged to others. The intention of that provision was to provide an exemption where a person is taken from a district which continues in existence after he is annexed to another, and not where he is, from the necessity of the case, attached to another, because the district to which he belonged is dissolved. The appellants are, therefore, liable to be taxed for building a school-house in district No. 11, inasmuch as they became inhabitants of that district by virtue of the dissolution of district No. 8.

It is hereby ordered, that the proceedings of the meeting held on the tenth of December last, in district No. 11, be, and they are hereby annulled.

(ANONYMOUS.)

If a teacher is engaged at a given sum per month, and the public money is paid to him, it is to be in part payment of his wages.
The tuition of indigent pupils cannot be paid out of the public money.
There is but one legal mode of paying teachers.

Two questions were submitted to the Superintendent for his opinion. They are given as presented to him, and his answers are annexed.

By JOHN A. DIX, *January 17, 1835.* *Question 1.* If a teacher is engaged by the trustees of a district at a certain sum per month, does he receive the public money in part pay, or is he entitled to it exclusive of his wages?

Answer. He is to receive the public money in part payment of his wages. If he were to receive it exclusive of the sum agreed on as his monthly wages, he would be paid more than the trustees are bound to give him, and it would be a fraud upon the district.

Question 2. If he (the teacher) takes charge of any district school at a fixed price per scholar, (say two dollars,) have the trustees the power of distributing the balance of the public money (after paying him the full price for poor pupils,) among those who send children to school; or, has the teacher a right to demand the residue without distribution, after having been paid the full price for all the poor pupils who have attended through the quarter?

Answer. Trustees have no right to make a direct payment of the tuition of poor pupils out of the public money, or to make any formal distribution of the public money for the benefit of the children attending a school. The law is clear and explicit on all these points, and if it is followed, no embarrassment or difficulty can possibly arise. Let us see what the law requires.

1. The trustees are to pay the wages of the teacher (he being duly qualified,) "out of the moneys which shall come into their hands from the commissioners of common schools, so far as such moneys shall be sufficient for that purpose."

2. "To exempt from the payment of the wages of teachers such indigent persons within the district as they shall think proper."

3. To collect the residue of the teacher's wages, after paying him the public money, "excepting such sums as may have been collected by the teachers, from all persons liable therefor."

These are the three steps authorized by law, and they are above stated in the order in which they should be taken.

Let us look at the practical effect of these provisions by supposing a case and applying them to it. A teacher may be hired by the trustees at so much per month or at so much per scholar.

The only difference is, that the amount of his compensation is, in one case, reduced to certainty, and in the other, it is contingent on the number of scholars. Either may or may not be most advantageous to those who pay, according to circumstances. The first mode is the most simple, and is, therefore, preferable. Let us suppose the last case.

A teacher is hired to instruct a school at two dollars per scholar for the term. He has forty scholars, of whom five are the children of indigent parents. He is entitled at the close of the term to \$80, and the trustees have on hand \$20 of public money applicable to the term. Now, what is the duty of the trustees? It is very plain.

1. They pay him the public money, \$20.
2. They exempt the parents of the five indigent children.
3. They make out a rate bill for \$60—with the collector's fees (five per cent) added thereto, assessing each of the parents of the thirty-five scholars with his just proportion of the amount according to the number of his children who have been instructed and to the time during which they have received instruction.

This is the only mode of proceeding recognized by law, and it must be strictly followed. Whether the teacher is engaged at so much per month or so much per scholar makes no difference. These are different modes of ascertaining the amount of his compensation. In the first case it is ascertained at the beginning, and in the second at the close, of his term.

The Trustees of school district No. — in the town of White Creek, *ex parte*.

Teacher's board bills cannot be included in a rate bill, or paid out of the public money.

In this case the teacher was boarded by one of the trustees of the district, and in making out a rate bill for his wages his board bill was included in it, the inhabitants having agreed to provide his board.

By JOHN A. DIX, *January 19, 1835*. Board bills for teachers cannot be allowed to be connected in any manner with the payment of their wages. The whole thing is wrong and unauthorized by law. Their board must be paid by themselves, or by the inhabitants by subscription. It cannot be paid out of the public money, or included in a rate bill. There is no safety but in a strict adherence to the course pointed out by law. Whether the particular mode of payment is the same in the end or not to the inhabitants of the district, is not the question. The important point is, whether the trustees have proceeded according to law. They have not, and they should make some prompt ar-

rangement of the matter for the satisfaction of the parties concerned. Trustees have no more right to include a teacher's board bill, or any part of it, in a rate bill, than they have to include it in a bill for a pair of shoes or any other article for his personal use.

The Trustees of school district No. — in the town of Locke, *ex parte*.

Non-residents are taxable for fuel if they own improved lands in the district.

The following question was proposed for the opinion of the Superintendent.

At a district meeting a tax is voted to procure fire wood for the school, and for the purpose of making some necessary repairs in the school-house. The tax is assessed. A, B and C live in an adjoining district, but each own land, which they themselves improve, within this district, and which is not taxable in the district where they live. Their land is taxed, and they decline paying the tax on the ground that they can not be legally taxed for fire wood; the tax is quite inconsiderable. Is it a legal tax?

By JOHN A. DIX, *January 19, 1835.* *Answer.* The tax is legal and may be collected. A tax for repairing a school-house or for fire wood, where fuel is not furnished in kind, is imposed in the same manner as a tax for building a school-house. Non-residents may be included in the tax list in either case if they have lands in the district cleared and cultivated, which are not taxable in another district.

The Trustees of school district No. 1 in the town of Castile, *ex parte*.

If two teachers are employed at the same time, the rate bill for their wages must be graduated by the number of days of attendance, without reference to the studies or branches in which different children may have been instructed. Scholars may be divided and put in different rooms.

The Superintendent having decided on a question presented from this district, (see ante page 203,) that a school-house should not be made larger than necessary for common school purposes, he was desired to state whether a school could be divided into departments, and different rates of tuition charged for different branches of instruction.

By JOHN A. DIX, *January 23, 1835.* I have already said that a school district may levy such a tax as is necessary for constructing a building suited to the purposes of the district, and no more. The amount of the tax is, of course, subject to the legal limitation of \$400, unless the commissioners of common

schools certify a larger sum to be required. Whether the building shall have three rooms or one, or whether it shall have two stories or one, is a matter for the determination of the inhabitants.

If two or more teachers are employed in a school district, the amount of compensation, which each shall receive, may be regulated by agreement in the manner best suited, in the opinion of the trustees, to the interest of the district. But the inhabitants cannot be required to pay different rates of tuition according to the branches of study in which their children are instructed. The law has settled the rate of contribution for the payment of teachers' wages. It must be according to the number of days, during which each person has sent to school. A man who sends two children to school for thirty days, will pay precisely as much again as a man, who has sent only one child to school for thirty days. A rate bill made out on any other principle would be illegal and could not be collected. It is manifest, therefore, that any distinction as to the rate of tuition to be paid in different departments of your proposed school is wholly inadmissible.

I see no objection to dividing the scholars and putting them in different rooms under separate instructors. This is in effect a division into classes for study and recitation. Every child in the district would have an equal right to be instructed in either and all of the departments. The only principle on which the division can be made, is the proficiency of the pupils in the studies respectively pursued in each. Let these matters be thoroughly understood, and I apprehend no difficulty, if your arrangements are commenced with the general concurrence of the inhabitants.*

The Commissioners of Common Schools of the town of Madison, *ex parte*.

The children of laborers temporarily employed on canals are not to be included in school district reports.

This was an application to the Superintendent for his opinion as to the propriety of including in the annual reports of school districts the children of such laborers on the Chenango canal as were actually at work in the districts on the last day of December, 1834.

By JOHN A. DIX, *January 24, 1835*. I have received your

* See the cases of Zeno Allen and others *against* the trustees of school No. 1 in the town of Hounsfield, page 4, and a decision by A. O. Flagg on the 16th July 1829, page 48.

letter stating that you understand the trustees of one or more school districts in your town are about to include in their annual reports the children of laborers on the Chenango canal.

I am of opinion that these persons have not such a fixed residence, as the law intends, to justify the enumeration of their children among those residing in the district on the last day of December. School districts are formed with a view to the accommodation of the inhabitants residing permanently within them, and with a regard to the number of children who may be conveniently instructed in the schools. The arrangements of the inhabitants are made in conformity to the actual condition of the districts, or possibly, with reference to such increase as in the ordinary progress of settlement may be reasonably anticipated. If the children of persons coming in large numbers to sojourn temporarily in the district for the purpose of constructing roads or canals leading through it, are to be deemed residents, they would have a privilege in the schools which might become so crowded as to prejudice seriously the interests of the permanent inhabitants, and might, indeed, for all practical purposes, work a disorganization of the district for the time being. A construction of the law which leads to such consequences, would certainly not consist with its intention, and under any view of the subject it seems to me that the children of the persons referred to cannot be regarded as coming within the provision, under which the annual enumeration is made.

Should the trustees of any of the school districts include the children of laborers on the Chenango canal in their reports, it will be your duty to see that the proper deduction is made. I can readily conceive that a difference of opinion may exist with regard to the propriety of including them; and therefore I would suggest that the trustees of the districts to which you refer should be immediately advised of my construction of the law, in order that their reports may be made out in conformity with it.

A. G. H. a teacher, *against* the Inspectors of common schools of the town of Petersburg.

Inspectors are inexcusable for giving incompetent teachers certificates of qualification.

The facts of this case appear by the Superintendent's order.

By JOHN A. DIX, *January 24, 1835.* The Superintendent of Common Schools has had under consideration the appeal of A. G. H. from a decision of the inspectors of common schools of the town of Petersburg in the county of Rensselaer, in refusing to grant him a certificate of qualification after having examined him as a candidate for teaching a school in said town.

On the 17th inst. the Superintendent addressed a letter to the above mentioned inspectors, calling on them for their reasons in refusing Mr. H. a certificate. This communication was made upon an examination of two certificates of qualification from the inspectors of the towns of Hoosick and Sand-Lake, and without a close inspection of Mr. H's letter of appeal, in which the certificates were enclosed. The Superintendent having received a statement from the inspectors of Petersburg, and having carefully examined all the papers submitted to him, is of opinion that they were perfectly right in withholding a certificate of qualification. Without any reference to the errors which the inspectors allege were made by Mr. H. in parsing a plain sentence, the Superintendent perceives that the word please is three times spelt "pleas" in his letter of appeal, and that the appeal is addressed to the "Superintender" of Common Schools. An individual who is so plainly ignorant of the English language is surely unfit to be charged with the management of a school; and the Superintendent is at a loss to conceive how the inspectors of Hoosick and Sand-Lake could have granted him a certificate of qualification. The state has provided liberally for the support of the system of common school education; but if the officers, who are entrusted by law with the examination of teachers, will not consider it their duty to exclude from the direction of the schools individuals wholly incompetent to give instruction in the most simple branches, the public bounty will not only be expended in vain, but it will be made instrumental to a misdirection of the intellectual faculties. It is a subject of general complaint that the standard of qualification for teachers in the common schools is extremely low; and this evil must continue to exist, if the inspectors, on whose decisions the standard in a great measure depends, will not perform their duty rigidly and with proper firmness. All that the state exacts is, that a school shall be kept three months per annum in each district by a teacher properly qualified. The requisition is by no means unreasonable, and the inspectors should consider it a solemn duty, not only to withhold a certificate when the individual is not fully competent to teach, but to institute a rigid scrutiny into the qualifications of all who present themselves as candidates for examination as teachers. The Superintendent is willing to believe that in this case the inspectors of Hoosick and Sand-Lake have granted Mr. H. a certificate on a very superficial examination. He trusts, however, that a similar case will not again occur, but that they will consider it due to themselves to withhold certificates, excepting where they are satisfied, from careful examination, that the propriety of granting them is in no danger of being impeached and their decisions brought into disrepute by the unworthiness of

those in whose favor they are made. It is due to Mr. H. to state that his moral character is not called in question. The only ground of objection to him is his want of the necessary learning and ability to teach a school.

The Trustees of school district No. 8 in the city of Albany, *ex parte*.

Evening schools may be kept in school districts in Albany, under certain restrictions.

By JOHN A. DIX, *January 30, 1835.* A question having arisen in school district No. 8 in the city of Albany, with regard to the propriety of enumerating, under section 11 of the act of 17th April, 1830, relating to common schools in said city, children who have attended an evening school kept in said district under the direction of the trustees for the instruction of apprentices and others, who are obliged to labor during the day, and who would, if such enumeration were not admissible, be wholly excluded from a participation in the benefit of the common school fund :

The Superintendent of common schools is of opinion that the attendance of the pupils in such evening school may be included in the account kept by the teacher pursuant to the provisions of the section and act above referred to: Provided, 1st. That such evening school shall have been kept under the direction of the trustees, and put in all respects on the same footing as the day school. 2d. That no pupil attending said evening school shall have been included in the account of those who attend the day school: and, 3d. That said school shall have been kept each evening as many hours as shall make each school time equal in duration to the average length of the school time of the day school.

C. W. M. a teacher in school district No. 1 in the town of Turin, *ex parte*.

If a teacher's certificate is annulled, the trustees may dismiss him.

C. W. M. was employed by the trustees of school district No. 1 in the town of Turin, to teach the district school four months. At the time he was so employed, he held a certificate of qualification from the inspectors of common schools of the town. At the expiration of three months the inspectors annulled his certificate, and the trustees dismissed him. The question submitted was, whether they could dismiss him before the expiration of the time for which he was engaged.

By JOHN A. DIX, *January 31, 1835.* I am of opinion that

the act of annulling a certificate of qualification by the inspectors of common schools releases the trustees of a school district from all obligation to continue in employment the teacher whose certificate is so annulled. If the trustees have entered into a contract with him for a specific term, and his certificate is in the mean time annulled as the law provides, the trustees are, in my opinion, at liberty to rescind the contract. They engaged him as a qualified teacher, and the moment he ceased to be so there was a failure of the consideration, which was at the foundation of their contract with him. If the trustees allow him to teach the school after notice from the commissioners that they have annulled his certificate, it is a continuance of the contract, and they will not, at a subsequent period, be allowed to dispute it. But I think they may dismiss him for the reason assigned. Otherwise a district might forfeit its right to a share of the public money for want of the requisite period of instruction by a qualified teacher. In this construction of the law there is no hardship, as the teacher enters into the contract with full knowledge of his liabilities.

The Trustees of school district No. 2 in the town of Summit, *ex parte*.

Persons set off from a school district without the consent of the trustees do not cease to belong to it until three months after notice in writing to the trustees. A collector has thirty days from the delivery of a tax list and warrant to collect a tax.

On the 7th Nov. 1834 the commissioners of common schools of the town of Summit, served on the trustees of school district No. 2 in said town, a notice that they had set off five inhabitants at their request, to district No. 1. On the 31st Dec. ensuing a tax of \$130 was voted to build a new school-house. The question proposed was, whether the persons thus set off from district No. 2, the trustees not having consented to the alteration, were liable to pay their proportion of the tax.

By JOHN A. DIX, *January 6, 1835*. An alteration in a school district does not take effect unless the trustees consent, until three months after notice to them. The three persons set off from your district will therefore continue to be inhabitants of the district until three months from the day on which one of the trustees had notice in writing of the alteration. Until the three months have fully expired, they are to be treated in all respects as inhabitants of the district: their children are to be enumerated in it, and they must pay their proportion of all taxes assessed on the district in the mean time.

The tax voted on the last of December to build a school-house was, I suppose, assessed as required by law within one month

after the vote taken; but the collector has thirty days from the delivery of the tax list and warrant to him to make the collection. If the tax list is made out according to law, and the three persons are included in it before the time when they will become inhabitants of the district to which they are set off, they are bound to pay the tax. All tax-lists are to include the name of every taxable inhabitant residing in the district at the time they are made out. This settles the whole question of liability.

The Inspectors of common schools of the town of Otsego, *ex parte*.

If the annual report of a school district includes part of two years, it is a false report.

The wages of a teacher not qualified according to law may be collected by a rate bill, but he cannot receive the public money.

If trustees pay public money to a teacher not qualified, they may be prosecuted for the amount as for a balance in their hands.

By JOHN A. DIX, *February 23, 1835.* The inquiries contained in your letter are given below at length, and the answers required of me annexed.

1st. A. B. and C., trustees of school district No. — in the town of —, employ D. to teach their school from November 1st, 1834, to April 1st, 1835. He teaches one or more weeks and presents himself to the inspectors for examination, obtains a certificate, and continues his school. The trustees in their return state, "Our school has been taught five months by a qualified teacher." Is it a true or false return?

Answer. It is unquestionably a false return, unless the district school was taught a sufficient time during the year 1834, previous to the inspection of the teacher referred to, by some other teacher qualified according to law. The annual report of the trustees must be dated on the first day of January of the year in which it is transmitted; and it must specify the whole time any school has been kept in the district during the year ending on the day previous to the date of such report, distinguishing what portion of the time such school has been kept by qualified teachers.

If, in the case stated by you, no school was kept during the year 1834 by a qualified teacher, excepting the one specified, the report is false in stating that a school has been taught five months by a qualified teacher, as it includes part of the year 1835, when it professes to be a report for the year 1834.

2nd. They pay the public money as far as it will go towards the wages of the teacher, and then assess the parents of the children for the remainder, as if the school had been taught the

whole time by a qualified teacher. Is it legal or illegal? If illegal, what is their liability?

Answer. If the public money paid to him does not exceed the amount of his wages during the time he held a certificate, the payment is legal; and the balance of his wages may be collected of those who sent children to school. Suppose for instance, that a teacher is employed on the first day of January for three months at \$15 per month, without a certificate of qualification. He is inspected and receives a certificate on the 1st day of March. At the end of his term, the last of March, the trustees may pay him \$15, a sum equal to his wages for the month of March, during which time he held a certificate, out of the public moneys in their hands; but they cannot pay him more. The balance, \$30, must be collected by a rate bill, including all persons who have sent children to school during any part of the term of three months, excepting such as may be exempted by the trustees on account of their inability to pay.—Whether the teacher holds a certificate or not, the right of the trustees to collect his wages of those who have sent children to school is the same; but unless he does hold a certificate, they cannot pay him any portion of the public money. If they pay him his wages out of the public money during any period of time when he was not qualified, it is illegal, and they are liable to a prosecution as will be seen hereafter.

3d. Have the trustees a right to appropriate the public money to the payment of the wages of a teacher who has no certificate dated within a year: and if they have not and do it, how are they to be made answerable?

Answer. They have no right to pay public money to a teacher, who has not received a certificate of qualification from the inspectors of common schools of the town within a year. If they do so, and make a report, on which the district will be entitled to receive its portion of the public money from the commissioners of common schools, the report must necessarily be false, as it must set forth that all moneys, received during the year reported, have been applied to the payment of the compensation of a qualified teacher: and no teacher is qualified, unless he holds a certificate dated within one year from the inspectors of the town. Should such a report be made, the trustees signing it would forfeit the sum of twenty-five dollars, and be guilty of a misdemeanor by virtue of the provisions of section 96, page 485, 1 R. S.

It has been supposed that trustees of school districts might be prosecuted under section 39, page 696, 2 R. S. for paying public money to a teacher not qualified according to law; but although the act relating to common schools intends that the pub-

lic moneys shall not be paid to teachers who do not hold certificates of qualification from the inspectors, the prohibition does not appear to be so clear and express as to be made the ground of a criminal prosecution.

But I am decidedly of opinion that an action for money had and received by trustees of school districts against their predecessors will lie under section 102, page 486, 1 R. S. which gives successors the same remedies for the recovery of an unpaid balance in the hands of a former trustee or his representatives, as are given to commissioners of common schools in such a case. See section 40, page 474, same volume. Although trustees of school districts are not prohibited in so many words from paying public money to a teacher not qualified, yet the intention of the law is clear. It is the duty of the trustees to pay the wages of "teachers when qualified, out of the moneys which shall come into their hands from the commissioners," &c. by virtue of sub. 8, of sec. 75, page 481, 1 R. S. Under section 24, same vol. page 471, no moneys can be paid to a school district, unless during the previous year a school has been kept therein three months by a qualified teacher, and unless "all moneys received from the commissioners during that year, have been applied to the payment of the compensation of such teacher." The payment of public moneys, as the school moneys received from the commissioners are usually called, to a teacher not qualified, involves therefore a forfeiture to the district, in which such payment is made, of its right to receive any public money the next year. Such payment by trustees I consider just as unauthorized and illegal as if it had been applied to the erection of a school-house or the purchase of fuel. It is not a payment in law, and a recovery may be had against them, as I have before stated, for the amount as an unpaid balance in their hands. This is my opinion on full consideration, and I think any court would so decide.

The inhabitants of school district No. 12 in the town of Genoa, *ex parte*.

If inspectors examine a teacher, and refuse to give him a certificate of qualification, the Superintendent will not interfere without very strong reasons.

In this case a teacher was presented to the inspectors of common schools of the town of Genoa for examination. The three inspectors of the town, and two of the commissioners, attended for the purpose. The teacher passed an examination in several branches, but declined answering any questions in grammar or geography. The inspectors therefore refused to grant him a certificate of qualification. The inhabitants of the district being

desirous of continuing him in employment, and of paying him the public money, applied to the Superintendent to know whether he would review the decision of the inspectors.

By JOHN A. DIX, *February 24, 1835.* The statute has confided the power of examining teachers and granting them certificates of qualification to the inspectors of common schools, and with the exercise of this power I could not with propriety interfere, excepting in a very strong case. It would be extremely difficult for me at a distance to ascertain whether the individual, who had been refused a certificate of qualification, ought to receive it. I did, on a recent occasion, sustain the decision of the inspectors of common schools of the town of Petersburg, in refusing to certify to the qualifications of a teacher. He appealed to me, and I dismissed his appeal on the evidence furnished by the appeal itself that he was not qualified.* But the case stated by you presents much greater difficulty. I could take notice of it on an appeal regularly presented, but I should hardly deem it proper to set aside the decision of the inspectors and pronounce the person referred to a qualified teacher, if he had been considered deficient in a knowledge of any branch of instruction usually taught in the common schools, or if he had refused to be examined in any such branch; for his refusal could only be regarded as a tacit confession of his incompetency to sustain an examination.

The Trustees of school district No. — in the town of Hoosick, *ex parte.*

If a man removes from a district on the last day of December, his children are to be enumerated in the district into which he moves.

A. B. removed on the 31st day of December, 1834, from one school district in the town of Hoosick into another district in the same town. The removal was commenced and completed on that day. The question proposed was, in which district his children were to be enumerated.

By JOHN A. DIX, *February 26, 1835.* The rule is settled that the children of a man removing on the last day of December from one school district to another, are to be enumerated in the district into which he moves. The equity of the rule is this: the enumeration is made with a view to the apportionment of the money for the use of schools for the succeeding year, and it is proper that the money drawn upon the basis of that enumeration, should as far as possible, go to the district in which the children enumerated are to reside, and in which the money re-

* See the case of A. G. H. against the inspectors of common schools of the town of Petersburg, page 209

ceived for their benefit is to be expended. I have, therefore, decided that if a man changes his residence at any time during the day on the 31st of December, his children shall be enumerated in the district into which he moves.

The Collector of school district No. 11 in the town of Farmington, *ex parte*.

If a collector takes and sells property to pay a tax, and the owner refuses to receive the excess, the collector must retain the amount in his hands.

This was a case in which the collector of school district No. 11 in the town of Farmington had sold, under a warrant issued by the trustees for the collection of a tax to build a school-house, a wagon belonging to A. B., a taxable inhabitant of the district. The amount of A. B.'s tax was \$7.98, and the wagon was sold for \$20. On the ensuing day the collector tendered to A. B. the balance, amounting to \$12.02, which he refused to take, and had continued so to refuse, although he had been repeatedly requested to receive it. Under these circumstances, the opinion of the Superintendent was asked as to the disposition to be made of it.

By JOHN A. DIX, *February 26, 1835*. Warrants for the collection of taxes for school district purposes, are to be executed in the same manner as warrants issued by boards of supervisors to town collectors. There is no law directing what appropriation shall be made of money in the hands of a town collector arising from the sale of property, when the proceeds of the sale exceed the amount of the tax and the person to whom the property belonged refuses to receive the excess. The statute directs such excess to be paid to the owner of the property, if no other person claims it. But if any other person claims it, it is to be paid to the supervisor of the town.

If it is not so claimed, and the owner of the property refuses to accept the excess aforesaid, the law makes no provision for the government of the collector. A tender of the money is sufficient to justify him in retaining it in his hands until it is demanded. If the demand should be made by the owner, you will be bound to pay it to him. In the mean time, you have nothing to apprehend. In six years from the time you last tendered payment his right to bring an action will expire by limitation. If he brings an action for the excess of the proceeds of the sale, you can pay it into court, and by pleading and proving a tender, he must pay costs. If he brings an action of trespass, you will stand on the same ground as you would if the money were not in your hands: the result will depend on the sufficiency of the

process, which is a question altogether distinct from the possession of the money.

The Trustees of joint school district No. 17 in the towns of Catharine and Catlin, *ex parte*.

A tax must be for a specific object.

A collector is not bound to take any particular article of property at the request of the owner; but if he does so it will be an answer to the charge of taking an excessive distress.

At the annual meeting in joint school district No. 17 in the towns of Catharine and Catlin, a tax of twenty dollars was voted to purchase fuel, one hundred and thirty dollars for enlarging the district school-house, and five dollars and fifty cents for reimbursing the trustees for moneys expended by them. The question proposed was whether the tax was legal.

By JOHN A. DIX, *February 26, 1835*. The proceedings of your annual meeting appear to be legal with a single exception. The notice for the meeting was sufficient; but there is an item of five dollars and fifty cents to reimburse the trustees for a similar amount expended by them over and above the amount of moneys belonging to the district, which came into their hands. The right of inhabitants of school districts to vote taxes is restricted to certain specified objects, and it should always appear by the proceedings that the tax is intended for one of those objects. See sec. 61, common school act, and decision No. 15 of the Superintendent of Common Schools, heretofore published with the school laws.* The reimbursement of moneys expended by trustees over and above their receipts, is not among the enumerated objects for which a tax may be voted, although it is possible that the expenditure may have been made for some authorized purpose. For instance, if the amount of the excess had been paid by them for fuel, the inhabitants might have voted a tax for fuel to cover it. But if it had been to pay the wages of a teacher, or for any object not specified in section 61, it could not be legally voted. The item of the tax in question seems to me objectionable now for want of that specific designation of the object in view, which is indispensable to show that the inhabitants have not exceeded their powers. If an appeal had been presented to me I might have prevented difficulty, but without an appeal I cannot interpose. If the case were to be brought before a court of law, I should apprehend that the proceedings would be set aside on the ground above stated. By reference to the case of *Baker vs.*

* See the case of the trustees of school district No. 1 in the town of Jamestown, page 27.

Freeman, 9 Wendell 36, you will perceive the supreme court has, in effect, decided that if in voting a tax a sum is included for an object unauthorized by law, the whole proceeding is vitiated and no part of the tax can be collected. The proceedings in your case may now be abandoned, a special meeting called and a tax voted anew. I see no other certain mode of avoiding litigation, which will be vexatious even if successful.

A collector should aim to take property amply sufficient to satisfy the tax to be paid, and no more. He is not bound to take the particular article of property offered by the person on whom the tax is assessed. For instance, if a canal boat is offered, he may decline it and take a cow or a dozen sheep; but if he were to take and sell, at the request of the owner, property worth ten times the amount of the tax, it would be an answer to the charge of making an excessive distress.

Elihu Tilden and others, *against* the inhabitants of school district No. 27 in the town of Onondaga.

If at a meeting called to fix the site of a school-house a reasonable time has not been given for all the inhabitants to assemble, a new meeting will be ordered.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *February 26, 1835.* This is an appeal by certain inhabitants of school district No. 27 in the town of Onondaga, from the proceedings of a special meeting held on the 5th of February instant, at which the site of the school-house was fixed.

It is alleged by the appellants that the site has been fixed at an inconvenient place, and that several of the inhabitants of the district were deprived of the opportunity of voting by the refusal of those who were assembled at the hour appointed for the meeting to wait a short time for others, who were expected, before they proceeded to business. In the answer to the appeal it is alleged that there was a majority of the inhabitants residing in the district present at the time the site was fixed; but the allegation with regard to the refusal of those present to wait for others who wished to have an opportunity of voting, is not negatived by the respondents.

There is no matter more deeply affecting the interests of a school district than the act of fixing a site for the school-house. So long as a district remains unaltered the site cannot be changed, when the school-house has been built or purchased, but upon conditions, which almost always interpose an insuperable obstacle to such change. It is of the utmost importance, therefore, that the wishes of all the inhabitants should be clearly ascertained,

and that every opportunity which can be desired should be afforded for comparing their views. Deliberation, and a full and fair expression of opinion should be secured before a decision, which it is extremely difficult to reverse, is pronounced.

Under the circumstances of the case, and under the influence of the considerations above mentioned, the Superintendent is of opinion that the matter in dispute should again be presented for the determination of the inhabitants.

It is, therefore, ordered, that the proceedings of the meeting aforesaid, held on the 5th instant, be and they are hereby set aside. And it is further ordered, that the trustees of school district No. 27 proceed forthwith to call a special meeting of the inhabitants for the purpose of fixing a site for a school-house, specifying in the notice the object of the meeting, and that it is called by the direction of the Superintendent of Common Schools.

The inhabitants of school district No 2 in the town of Stamford, and of joint district No. 12 in Stamford and Harpersfield, against the Commissioners of Common Schools of said towns.

School districts should not be formed with less than forty children between five and sixteen years of age.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *February 27, 1835.* The Superintendent of common schools has carefully examined the appeal of certain inhabitants of school district No. 2 in Stamford, and of school district No. 12 lying partly in said town and partly in the town of Harpersfield; and also the answer of the commissioners of common schools of said towns, and the papers submitted by the inhabitants of a new school district formed out of the two districts before mentioned and No. 4 in Stamford, said appeal having been brought from the proceedings of the commissioners in forming the new district aforesaid.

The Superintendent is well aware that the commissioners have acted in this case with a sincere desire to promote the interest of all concerned and to advance the cause of education; and he regrets that he is compelled from regard to principles, which can rarely be departed from with safety, to set aside their proceedings. The commissioners have not perhaps had so frequent occasion as the Superintendent to remark, that almost all the existing evils of the common school system have their origin in the limited means of the school districts. The tendency is to sub-

division and to a contraction of their territorial boundaries. This consequence must follow in some degree from the increase of population; but the subdivision of school districts tends to advance in a much greater ratio. The average number of children in our school districts is about fifty-five. No school district should number less than forty children between five and sixteen years of age. From the observations he has made the Superintendent deems it due to the common school system, that no new district shall be formed with a much smaller number, unless peculiar circumstances render it proper to make it an exception to the general rule. In feeble districts cheap instructors, poor and ill furnished school-houses, and a general languor of the cause of education, are almost certain to be found.

In the case under consideration a district is formed with a taxable property of about eight thousand dollars, and children variously stated from twenty-two to thirty in number. One of the districts, (No. 12,) out of which the new district is formed, is reduced from 53 children between 5 and 16 years of age to 38; and district No. 2 is reduced from 40 to 33. District No. 4 is not injuriously affected by the alteration. But the Superintendent does not perceive that he can, consistently with the rule already suggested, sanction the formation of a new district unless the accommodation of the inhabitants renders it indispensable, when the consequence is to reduce two existing districts below the proper standard, and create another which, both in point of property and children, is also far below the average ability of the school districts throughout the state. There is nothing in the local situation of the territory taken to form the new district which renders the creation of another district necessary. The school-houses in the adjacent districts are near, and, with the exception of district No. 4, the schools cannot be so crowded as to be inconvenient. The number of scholars reported as having received instruction during the year 1834 in district No. 2 is 62, and in district No. 12 the number reported is 59; but it by no means follows that the whole number in either case was receiving instruction at the same time. The whole number of scholars reported in the new district is but 32, whereas the number of children between 5 and 16 years of age is somewhat less.

The erection of a school-house by a part of the inhabitants of a district at their own expense ought not to be allowed to influence the commissioners in forming them into a new district. Should such a rule be adopted, a few persons would always have it in their power to break up the district. The only questions are whether the parties interested are so inconveniently situated as to need a separate organization, and whether they can be so or-

ganized without doing injustice to others and prejudicing the interests of education.

The Superintendent regrets that he is constrained to differ in opinion with the commissioners of common schools; but after full consideration he deems it his duty to set aside their proceedings.

It is therefore ordered, that the new district, formed as aforesaid out of districts No. 2, 4 and 12, be, and it is hereby annulled.

The Trustees of school district No. — in the town of Huntington, *ex parte*.

Trustees cannot levy a tax without a vote of the district.

Trustees being authorized by a vote of the district to do any act involving an expenditure of money, must be indemnified by the district.

In this case a vote was passed at a district meeting to take down the school-house and put it up at a different place, the site having been legally changed. No tax was voted to pay the expense of removal. After the house was removed, the inhabitants of the district refused to vote a tax to cover the expenditures of the trustees. The question proposed was whether the trustees could levy the necessary sum for the purpose, without a vote of the inhabitants, and if not, what was the proper remedy.

By JOHN A. DIX, *March 5, 1835*. The trustees of a district have no right to make out a tax list and levy a tax, unless the inhabitants vote a specific sum so to be levied. The communication heretofore made by me on this subject presumed that such a tax would be voted by the inhabitants; and I said, that in case of their refusal to vote it, I should consider it my duty to direct to be levied on the property of the district a sum sufficient to cover any expenditures which may have been incurred in pursuance of a vote of the inhabitants to remove or repair the house. If trustees undertake to remove a school-house, buy a lot for a site, or do any other act which they are not by law authorized to do without a vote of the inhabitants of the district, it is at their own peril. The inhabitants may ratify their proceedings by a subsequent vote; but if they do not choose to do so, the trustees are without remedy. I have, however, uniformly directed, where the inhabitants of a school district have, by a vote to that effect, authorized their trustees to go on and make repairs, or do any other lawful acts involving an expenditure of money, that the districts should save the trustees harmless, if the latter have acted in good faith. The inhabitants may always limit an expenditure in contemplation by voting a specific sum for the purpose: they should always do so; but if they neglect it, and give a general direction to the trustees to go on

and make repairs, or do any other act authorized by law, without limiting the amount to be expended, I shall always deem it my duty, in case the inhabitants refuse, after the work is done, to vote an amount sufficient to cover the expenditure, to direct such amount to be levied, on receiving proof that it is no more than has been reasonably expended.* But the trustees cannot, without a vote of the district, or without an order from the Superintendent, levy a tax on a district, excepting in the special manner provided by law in case of a division of a school district, where the property of the district is to be divided, and has for that purpose been appraised by the commissioners of common schools.

The Trustees of school district No. — in the town of Patterson, *ex parte*.

If the clerk gives a verbal notice for a special meeting to part of the inhabitants and a written notice to the residue, the proceedings are not void, but may be set aside on showing cause.

In this case the clerk of school district No. — in the town of Patterson, commenced giving verbal notices for a district meeting, but after having notified a few persons he served a written notice on the residue of the inhabitants of the district, as required by law. The question submitted was whether the proceedings of the meeting held in pursuance of such a notice were legal?

By JOHN A. DIX, *March 6, 1835*. If the clerk of a school district warns a few of the inhabitants verbally to attend a meeting and afterwards notifies the residue by a written notice as required by law, the proceedings may not be void, but may be set aside on showing cause. I have always held that the inhabitants of a school district, coming together without any attempt on the part of the clerk or trustees to give a legal notice, could not act; their proceedings would be void, as they would not be legally assembled. But if some of the inhabitants have been notified as required by law, and the notice is defective as to the others, the proceedings are not void, but voidable on showing sufficient cause to the Superintendent. It may be in the case referred to by you that the persons who received a verbal notice were present at the meeting. If so, I would not allow them to object to the insufficiency of the notice. It may be that they were all present but one or two: in this case I should not disturb the proceedings, unless the omission to give the proper notice was wilful and fraudulent. There are many circumstances to be

* See the case of the trustees of school district No. 30 in the town of Johnston, *against* the inhabitants of said town, page 161.

taken into consideration in such cases, in coming to a decision: and, therefore, it is impossible to give to the general proposition contained in your letter an answer which would be applicable to every case. The clerk should undoubtedly, when he received the written order referred to, have retraced his steps and given every voter a written notice, by reading it to him or leaving a copy; and yet the reasons in favor of setting aside the proceedings may not be strong enough to justify such a measure.

The Trustees of school district No. 7 in the town of Philadelphia, *ex parte*.

A minister of the gospel, being a freeholder, may vote at school district meetings.

The following question was proposed for the Superintendent's opinion:

Has a minister of the gospel, residing in a school district and owning property therein, but not to the amount for which ministers of the gospel are exempt by law from taxation, a right to vote at a meeting of the inhabitants of the district?

By JOHN A. DIX, *March 6, 1835*. A minister of the gospel if he is "a freeholder in the town," although his freehold may not be equal in value to the amount exempt from taxation, may vote at the meetings of the school district in which he resides. But if he is not a "freeholder in the town," and if his property is all personal, he cannot vote, for his personal property being wholly exempt from taxation under the general provision relative to the assessment of taxes, is not "liable to taxation in the district;" nor is he liable to be assessed to work on the highway, as there is a special exemption in his favor. See 1 R. S. sec. 24, page 506. If he has been assessed to pay taxes in the town during the present or the preceding year, he may vote; but I infer from your inquiry that he is not liable to taxation at all.

The whole question, therefore, turns on his being "a freeholder in the town." If he is, he can vote; if not, he cannot vote without incurring a penalty of ten dollars.

The Commissioners of Common Schools of the town of Georgetown, *ex parte*.

If one district is united to another, the public money belonging to either must be applied for the common benefit of all.

In consequence of a dispute as to the boundaries of school districts No. 2 and 8 in the town of Georgetown, a small balance of the public moneys distributed in April, 1834, was retained by the commissioners of common schools. Near the close of the

year 1834, district No. 2 was annexed to No. 8, and after their union the balance so retained was adjudged to belong to the former. The question proposed was whether it could be applied exclusively for the benefit of the individuals formerly belonging to that district, or whether the whole united district should participate in its application.

By JOHN A. DIX, *March 9, 1835.* The propriety of paying over to the trustees of late district No. 2 the small balance of public money in your hands which was appropriated to that district, must, it seems to me, depend on a single circumstance. The district is now united to another. If the money is paid to the trustees of late district No. 2, have they authority to make a lawful disposition of it? Certainly not, unless they are bound, as former trustees of the district, to pay the wages of a qualified teacher, under a contract which has been fulfilled on his part. If they employed a teacher, and he is entitled to a balance for teaching, and has received a certificate from the inspectors in the town, then the public money ought to be paid to the trustees for the discharge of that balance, as far as it will go. But if there is no such balance due, the money should be paid to the trustees of district No. 8, and appropriated to the benefit of the whole district. There is no law by which the moneys derived from the common school fund can be applied to the benefit of a part of a school district, and it is only as an independent district that the inhabitants of No. 2 could be exclusively benefited by the money. From the moment, therefore, that they were united to another district the public money belonging to No. 2 became applicable to the benefit of the united district, to be expended as the law directs, unless there was a balance due a qualified teacher in No. 2. In that case the inhabitants of No. 2 might be exclusively benefited by the application of the balance in your hands to the discharge of the debt.

Francis Clarke, against the Trustees of joint school district No. 12 in the towns of Shelby and Ridgeway.

Trustees, in making out a tax list, are bound to know who are and who are not taxable inhabitants of the district.

The last assessment roll of the town is the proper guide to trustees in making out a tax list as to the valuation of property, but not as to ownership.

The appellant was an inhabitant of that part of joint school district No. 12 in the towns of Shelby and Ridgeway which was included within the boundaries of the latter town. On the 1st of September, 1834, he disposed of his stock in trade, and removed with his family, on the 19th of October ensuing, to the city

of New-York, with the intention of making it his place of residence. On the 16th of December he returned to Ridgeway to close his unsettled business, and remained there nine days, and he again returned to Ridgeway in February for a few days. On the 27th of January a tax was laid in district No. 12 to build a school-house, and he was included in the tax list as an inhabitant of the district. The questions proposed were, whether he could be taxed as such on his personal property, and whether he could be taxed for several lots of land in the district, which he had sold since the last assessment roll of the town was made out?

By JOHN A. DIX, *March 10, 1835.* This is a case submitted by Francis Clarke and the trustees of joint district No. 12 in the towns of Shelby and Ridgeway, in relation to the assessment of the former to pay a tax for building a school-house in said district.

The statement contained in the affidavit of Francis Clarke, which affidavit is referred to in the statement signed by him and the trustees, and is not disputed by the latter, is conclusive as to the fact that he was not, at the time the tax list was made out, a resident of the district. So far, therefore, as the assessment of his personal property is concerned, he was not lawfully included in the tax list, which could only embrace "the taxable inhabitants residing in the district at the time of making out the list." He might be included in it as a non-resident owner of property, and was therefore justly taxable for all the cleared and cultivated lots of which he was the owner at the time the tax list was made out.

The trustees were bound to know who were and who were not taxable inhabitants of the district, and they were also bound to know who were and who were not owners of property within the district. The last assessment roll of the town was their proper guide only as to the valuation of the property, and not as to the ownership. Mr. Clarke swears that he was at the time the tax was made out the owner of lots No. 15, 16 and 83 only, and that the valuation of said lots, according to the last assessment roll of the town, was \$1500. On those lots an exemption is not claimed.

It is hereby decided, that Mr. Clarke be released from the tax on all his personal property, and that he be taxed on \$1500, the value of the real estate possessed by him at the time the tax list was made out. The circumstances connected with the removal of Mr. Clarke were such that a difference of opinion with regard to his residence might well be entertained, and as the trustees have acted in good faith, it is further ordered that they be, and they are hereby authorized to assess upon the owners of

lots No. 25, 33, 42, 77, 272, 274 and 275, so much of Mr. Clarke's tax as was assessed to him on account of those lots, and to reassess the deficiency upon the whole taxable property of the district.*

The Clerk of school district No. 23 in the town of Orleans, *ex parte*.

If an alteration is made in a school-district, without the consent of the trustees, and without the knowledge of the parties interested, an appeal to the Superintendent will be allowed after three months.

In this case it was alleged that the commissioners of common schools had made an alteration in school district No. 23, and given a notice to one of the trustees, who was desirous that the alteration should take place, and who concealed his knowledge of it from his associate trustees and from the parties immediately interested, until after the expiration of three months.

By JOHN A. DIX, *March 12, 1835*. The question submitted to me is, whether an appeal will be allowed where a new district has been formed by the commissioners of common schools, and a notice in writing read to one of the trustees of a district, from which such new district has been partly taken, and the trustee, to whom the notice was so read, refused or neglected to give notice to the other trustees of the district until after the expiration of three months, and neither the inhabitants, nor the two trustees last referred to, had any knowledge that such alteration was contemplated.

In such a case I should certainly allow an appeal. The parties interested should be apprized of the proposed alteration; and if notice has not been given, or if the person to whom it is given, has intentionally withheld it from others, who would have availed themselves of it to resist the measure in contemplation,

* In the case of *Easton and others vs. Calendar*, 11 Wendell 90, the Supreme Court held that the trustees of a school district were not answerable as trespassers in omitting to insert the names of all the taxable inhabitants in a tax list, the omission being an error in judgment, and there being no evidence of bad faith. The court also said, "The plaintiff below was not without his remedy, 1 R. S. 487, § 110, 111, and the amendment of the law, 20th April, 1830, provides that any person conceiving himself aggrieved in consequence of any decision made by the trustees of any district, in paying any teacher, or concerning any other matter, under the present title, (which includes the whole of the school act,) may appeal to the Superintendent of Common Schools, whose decision shall be final. This provision was intended for what it practically is, a cheap and expeditious mode of settling most, if not all of the difficulties and disputes arising in the course of the execution of the law. A common law certiorari would no doubt lie from this court, to the trustees to bring up and correct any erroneous proceeding not concluded by an adjudication of the Superintendent, or in a case where his powers were inadequate to give the relief to which the party was entitled."

and the latter have no knowledge of it, I should deem it due to every consideration of equity to allow the parties aggrieved to come in and show cause why the proceeding complained of should be set aside.

(ANONYMOUS.)

A tax cannot be voted to buy a record book for a school district. (But see note.) In voting a tax to purchase a site, a sufficient sum may be included to pay for recording the deed.

By JOHN A. DIX, *March 18, 1835.* No authority is given by the statute to the inhabitants of a school district to vote a tax to buy a record book for the use of the district.* The intention was that such a book should be provided, but it was not included in the enumeration of the objects for which a tax may be voted.

When a tax is voted to purchase a site for a school-house, a sufficient sum may be included in it to pay for recording the deed: for this is necessary to perfect the title, and it is, therefore a part of the expense of procuring the site.

The Commissioners of Common Schools of the town of Norwich, *ex parte.*

The funds arising from the gospel and school lots belonging to the twenty townships on the Unadilla river are to be applied exclusively to the benefit of the inhabitants of such townships.

None but inhabitants of the township can participate in the election of a town agent, or in directing the application to be made of the funds arising from the gospel and school lots.

In this case the direction of the Superintendent was requested as to the proper course to be pursued, the inhabitants of township No. 15, one of the twenty townships on the Unadilla river, and constituting part of the town of Norwich, having failed to elect an agent for said township, in the manner required by law.— He was also desired to state in what manner the proceeds of the funds arising from the gospel and school lots were to be applied.

By JOHN A. DIX, *March 26, 1835.* The gospel and school lots belonging to the twenty townships on the Unadilla river, were set apart for the benefit of the inhabitants of those townships. The act of 13th April, 1819, Laws of N. Y. 42d session, chapter 224, makes a special provision for the management and appropriation of the funds derived from the lots be-

* By an act passed the 22d April, 1837, the inhabitants of school districts are authorized to vote a tax for the purpose of purchasing a book to record their proceedings. This provision was made to remedy the defect in the law, to which the above decision refers.

longing to the 10th and 15th townships. This act was not revised; see page 655, 3 R. S. but continues in full force. By the fourth section of the act the interest arising from the moneys derived from the sale of lots belonging to either of the townships is to be applied to the support of common schools "in such manner as the inhabitants of such township" or a majority of them shall direct.

The second and third sections of the act, direct the manner of proceeding in the appointment of a town agent. The inhabitants of the 10th township are required to meet annually (until the township shall be erected into a separate town) on the first Tuesday of June, and elect an agent for said township.—There is no authority to proceed in any other manner, nor would any proceedings in contravention of these provisions have any validity whatever. The 4th title of chap. 15, part 1, R. S. has no application to this case. By the note of the Revisers at the bottom of page 499, 1 R. S. it appears that this title was compiled from laws which had no reference to the townships in question, as may be seen by an examination of those laws. It will, therefore, be the duty of the inhabitants of the 10th township to meet on the 1st Tuesday of June next, elect an agent, and vote what disposition shall be made of the interest arising from the sale of lots belonging to said township.

The inhabitants of the 15th township should have met on the day of the annual town meeting for the town of Norwich, separate and apart from the other inhabitants of that town, elected an agent, and voted what application should be made of the interest arising from the sale of the lots belonging to the 15th township. If they have not done so, I see no alternative but for the agent elected last year to hold over and apply the moneys, which may come into his hands, as he did last year. The directions of the inhabitants as to the application of the moneys, whenever those directions are given in the manner specified in the act of 13th April, 1819, are binding and must be carried into effect. But none but the inhabitants of the township (not the inhabitants of the town of which the township is a part) can participate in the proceedings.

The Trustees of a separate neighborhood in the town of Southport, *ex parte*.

Children residing in other states when attending schools in separate neighborhoods within this state cannot share the public moneys.

In this case children from the state of Pennsylvania had attended school in a separate neighborhood in the state of New-York, and the question proposed was whether the children so

attending school could share the public moneys derived from the New-York school fund.

By JOHN A. DIX, *March 31, 1835.* Children residing in other states and admitted to schools within this state cannot participate in the distribution of the school moneys. Subdivision 2, of section 20, page 470, 1 R. S. authorizes the establishment of separate neighbourhoods where it is convenient to unite with the inhabitants of an adjoining state for the support of a school: But by the 25th section of the same title, the public moneys are required to be faithfully applied for the instruction of children residing in such neighbourhood. These provisions are so clear in their language that no doubt can exist as to their intention.

(ANONYMOUS.)

Trustees, guardians, executors and administrators, are taxable in their representative character where they reside for personal property in their possession, whether the real parties in interest are benefited by the expenditure of the tax or not.

By JOHN A. DIX, *April 2, 1835.* Trustees, guardians, executors and administrators, are taxable for all personal estate in their possession, or under their control, in the town or ward where they reside. See 1 R. S. p. 389, sec. 5. I have decided that the same principle applies to school districts.* The personal property so possessed or controlled is taxable in the district in which the trustee, guardian, executor or administrator resides. Under section 10, same vol. page 391, a deduction is to be made by the assessors for debts due from the individual assessed in his representative character. The debts referred to in the section last mentioned, are such as are specified in section 27, 2 R. S. page 87.

The question whether the real owners of the property are directly benefited by the expenditure of the tax assessed upon it, does not appear to have been one of the considerations in view of the provisions referred to, for it is manifest that the personal property in the hands of a trustee, guardian, &c., in Buffalo, is liable to be taxed there, although the real parties in interest may live in Albany.

After the administration of an estate in the hands of an executor or administrator, upon the rendition and settlement of a final account of his proceedings, the personal property is, of course, not liable to taxation where he resides; but so long as it is in his possession or under his control, it is so liable as before mentioned. In this case a reduction may be claimed from the last

* See the case of the trustees of school district No. 9 in the town of Rensselaerville, page 157.

assessment roll of the town under the provisions of section 79, page 482, 1 R. S.

The Commissioners of Common Schools of the town of Windham, *ex parte*.

A minister of the gospel cannot be an inspector of common schools.

At the annual town meeting in the town of Windham in the year 1835, three clergymen were elected inspectors of common schools. The Superintendent was requested to state whether they were eligible to the office to which they had been elected, and whether the town would in that case forfeit its right to a share of the public money.

By JOHN A. DIX, April 13, 1835. By the constitution of this state, art. 7, sec. 4, no minister of the gospel or priest of any denomination whatsoever, is capable of holding "any civil or military office or place within this state." This exclusion clearly extends to town officers: they are public officers with authority by law to execute certain civil functions.

An inspector of common schools is a town officer, and the inhabitants of your town having appointed to that office persons not eligible, the case occurs in which three justices of the peace may appoint. If, however, these persons have entered on the duties of their office their acts are, under the decisions of the supreme court of this state, valid, so far as the public and third persons are concerned. Thus, if they have examined teachers and given certificates of qualification, the certificates are good, so as to justify the trustees of school districts in paying the public money to teachers holding them. The right of your town to receive the public money cannot be affected in any manner by the fact that they have been improperly elected.*

* In the case of Wilcox vs. Smith, 5 Wendell 231, the supreme court held, that "an individual coming into office by color of an election or appointment, is an officer *de facto*, and his acts in relation to the public or third persons, are valid until he is removed, although it be conceded that his election or appointment was illegal."

So in a case in Massachusetts, referred to by the court in the above mentioned case, the acts of a sheriff *de facto* were held valid as to third persons, though his appointment was subsequently declared to have been made "without constitutional and legal authority."

The Trustees of school district No. — in the town of Burlington, *ex parte*.

Mode of paying the public money to a teacher in a special case explained. The number of children attending school during the year, must be ascertained from the teacher's lists.

This was an application for the direction of the Superintendent in certain cases, the nature of which will appear by his answer.

By JOHN A. DIX, *April 16, 1835*. I endeavored in my communication to the inspectors of common schools of the town of Otsego, who addressed some inquiries to me,* to be so explicit with regard to the application of the public money to the payment of teachers' wages, that no misapprehension should exist in relation to it. This letter you say you have seen, but as you do not consider it as meeting your inquiries, I proceed to answer them.

The public money must be wholly expended for services rendered during the year in which it is received. Suppose a teacher is engaged in November and teaches from the 1st of December to the end of February, three months. Out of the school moneys received in April ensuing he may be paid two months wages, and the balance must be assessed on those who sent children to school during any part of the three months. Although he is to be paid for the services rendered in January and February out of the public money, his wages for December must not be assessed exclusively on those who sent children to school during the month of December. This would be unequal and unjust. He can receive only two months' wages out of the public money, because he only taught two months during the year in which it was received; but the money being paid to him the balance must be considered as spread over the whole term of three months, and paid by those who sent children to school during any part of it. If the teacher should leave the school on the 1st of January, after teaching through the month of December, and another should be employed in his place to teach through his term, the same course can be pursued and the three months may be regarded as a single term. The money being provided as before stated, their respective dues would be paid out of the amount so provided. But if it becomes indispensable to settle with the first teacher when he leaves the school, the necessity of the case will require that he be paid by a rate bill made out against those who sent their children to school, unless the trustees have in their

* See the case of the inspectors of common schools of the town of Otsego, page 212.

hands public moneys received during the preceding year to be expended for services rendered in that year.

Teachers must keep a list containing the name of every child attending school during each term. The trustees should take these lists at the end of each term, or obtain and preserve copies of them, and at the end of the year the exact number of children who have attended school may be obtained by correcting the lists, so that no name shall occur more than once. There is no other mode of attaining a tolerable degree of accuracy in enumerating children who are sent to school.

The inhabitants of joint school district No. 2 in the towns of Unadilla and Sydney, *ex parte*.

Money cannot be raised by tax in a school district for contingent uses.

If part of the inhabitants of a district separate from the rest, and build a private school-house, it will not be deemed a reason for organizing them into a separate district.

In this case a portion of the inhabitants of joint school district No. 2 in the towns of Unadilla and Sydney, without applying to the commissioners of common schools of those towns built a school-house in one corner of the district, and set up a private school. Having done so, they applied to the commissioners of common schools to be set off as a separate district, and the application was refused. The applicants then applied to the Superintendent to know whether, under the circumstances, he would not direct a new district to be formed. The Superintendent was also requested to state whether in his opinion a tax of ten dollars could be raised for repairs in district No. 2, when it was admitted that only five dollars were required for the purpose.

By JOHN A. DIX, April 17, 1835. No tax should be raised in a school district unless it is absolutely necessary for a specific object. It is wholly irregular and unauthorized to raise moneys upon the taxable property of a district and keep them on hand for contingent uses. If five dollars are wanted for repairs, it is altogether wrong to raise ten dollars on the alleged ground that the balance may be wanted at a future day. The inhabitants of school districts are not restricted in the amount which they may raise for repairing a school-house, but they ought not to vote a larger sum than is required for the immediate purpose in view.

I have always refused, excepting for the strongest reasons, to direct the formation of a school district on an appeal from the refusal of the commissioners of common schools, where a portion of the inhabitants of an established district separate themselves from it and build a private school-house for themselves, without any previous attempt to procure a separate organization.

The fact that they have built a school-house at their own expense cannot be allowed to have any weight in such a case. The commissioners of common schools of the towns of Unadilla and Sydney might have erected a new district if application had been made to them. But it will be perceived at once that if a portion of the inhabitants of a district, without applying to the commissioners as the law provides, set up for themselves, and thus disregard the provisions of the law, the example cannot be otherwise than pernicious, and may lead to the disorganization of any district in the state. I shall deem it my duty, therefore, to discountenance all proceedings of this sort. If a portion of the inhabitants of a district require a separate organization, let them apply to the commissioners. If the commissioners deny the application, let them appeal to the Superintendent, who will do them justice. But if they disregard the authority of both in the first instance, they must not deem it unjust if their application at a subsequent time is refused. The application will not be denied if it is manifestly proper to grant it; but, as I have already said, the fact that a school-house has been built will have no influence in favor of it.

The Commissioners of Common Schools of the town of Worcester, *ex parte*.

If a commissioner of common schools absconds with school moneys in his hands, it is a loss to the town.

A commissioner who has signed a receipt for school moneys, in conjunction with his colleagues, is not answerable unless the moneys actually come into his hands.

This was an application to the Superintendent for his opinion in a case the facts of which appear by his answer.

By JOHN A. DIX, *April* 20, 1835. Jonas Chapman, Seneca Bigelow and Abraham Becker were appointed commissioners of common schools of the town of Worcester in March, 1834.

In March, 1835, Jonas Chapman, Abraham Becker and Joshua K. Champion were elected to the same office.

Before the town meeting in March, 1835, Jonas Chapman obtained from the collector of the town the amount raised on the town for common school purposes in the year 1834, being \$109.15, and gave the collector a receipt signed by himself and Seneca Bigelow.

The sum before mentioned as received by Chapman remained in his hands until about the 1st of April instant, when he absconded without paying over any part of it to his associates; and no part of it has at any time been in the hands of either of the other commissioners.

The equal sum of \$109.15, derived from the common school

fund, has been received from the county treasurer, and apportioned according to law by the commissioners.

The question now occurs, whether the town or the commissioners must sustain the loss occasioned by the absconding of Chapman?

I take it for granted that the payment to Chapman was made by the town collector under the warrant of the supervisors, pursuant to the provisions of sec. 18, page 469, 1 R. S. If so, the loss must fall on the town. The commissioners are severally responsible only for such portion of the public moneys as actually come into the hands of each. The fact that Bigelow signed a receipt in conjunction with Chapman is of no consequence. It is competent for Bigelow to show that none of the moneys thus receipted for came into his hands.

The Trustees of school district No. 12 in the town of Glen, *ex parte*.

A fence is a necessary appendage to a school-house.

This was an application to the Superintendent for his opinion in a case in which a tax had been voted to build a fence around the district school-house and lot.

By JOHN A. DIX, April 23, 1835. I have received your letter inquiring whether a necessary, wood-house and fence are to be deemed appendages of a school-house, so as to bring them within the enumeration of objects for which the inhabitants of school districts are authorized to lay a tax on the taxable inhabitants of such districts. My predecessor decided several years ago that a wood-house and necessary were appendages to a school-house within the meaning of the statute; and in my opinion a fence around the school-house lot may with equal propriety be so considered. The legislature has given the inhabitants of a school district power to purchase a site for a school-house, and to expend four hundred dollars on the house, and certainly a fence may be justly regarded as a necessary appendage for the purpose of enclosing and securing the lot and buildings from depredation. You may proceed and collect the tax laid for this purpose.

The Trustees of school district No. — in the town of Lansing, *ex parte*.

A certificate from the inspectors of common schools that the candidate gave them good satisfaction in particular branches, is not a legal certificate of qualification for a teacher.

The inspectors of common schools in the town of Lansing gave a teacher a certificate in the following words:

"Having examined A. B. with a view to his obtaining a certificate to teach a common school in this town, we do certify that said A. B. gave us good satisfaction in reading, writing, arithmetic, accent, cadence, emphasis and orthography, and we believe him to be a man of good moral character."

The question proposed was whether this was a sufficient certificate of qualification.

By JOHN A. DIX, April 25, 1835. A certificate of qualification for a teacher must be in the form "prescribed by the Superintendent of Common Schools." See the statute entitled "Of Common Schools," sec. 47. The Superintendent has prescribed the form, see page 43, pamphlet edition of the common school laws, published by the Superintendent in 1831. (See appendix.) The inspectors are wrong in giving a certificate in any other form, as it is not a compliance with the statute, and may mislead those who do not examine the subject with scrutiny. A certificate, therefore, setting forth that A. B. gave the inspectors good satisfaction in particular branches, and that his moral character is good, does not conform to the law, and it should not have been given by the inspectors. The law authorizes them to give a certificate in a certain event, and then it must be in the form specified. If they are satisfied as to the qualifications of the teacher, in respect to moral character, learning and ability, they are bound to give him such a certificate as the Superintendent shall have prescribed. If they are not satisfied, they should give him no certificate. They are wholly without authority to take a middle course by giving a qualified certificate.*

The Trustees of school district No. 1 in the town of Cohocton, *ex parte*.

If the annual report of a school district is lost and the district does not receive the public money, application must be made to the Superintendent of Common Schools to have the deficiency supplied out of the moneys to be distributed the next year.

The trustees of school district No. 1 in the town of Cohocton prepared their annual report for the year 1834, in February, 1835, and handed it to A. B. one of their neighbors, who promised to deliver it to the town clerk. A. B. handed it to another neighbor, who made a similar promise, and the report was lost before it reached its destination. The commissioners of common schools not having received it, did not include the district in the apportionment of the public moneys. The Superintendent was

* See a case decided by A. C. Flagg, Dec. 16, 1827, page 24; also the case of the trustees of school district No. 4 in the town of Lenox, page 76, and a decision dated December 26, 1834, page 199.

desired to state in what manner the loss could be made up to the district.

By JOHN A. DIX, *May 1, 1835.* Your annual report failed to reach its destination through your own negligence. You should have handed it to the town clerk yourselves, or have ascertained, before the time appointed for the annual apportionment, that it had reached him.

There is no remedy for the neglect on your part but to allow the district, out of next year's moneys, the sum it has lost. This can only be done by order of the Superintendent of Common Schools, on an application setting forth all the facts of the case, under oath. Copies of the affidavits must be served on the commissioners, with notice of the time when the application will be made. A copy of the last annual report must also be sent to the Superintendent, or in default thereof an affidavit setting forth all the facts necessary to entitle the district to participate in the distribution of the public moneys.

When the whole case is presented, it will be considered whether, under all the circumstances the district should not be allowed, out of the moneys to be apportioned next year, the sum it would have received this year if the report had been delivered to the proper person, so as to secure the equitable rights of the inhabitants from the consequences of the neglect of the officers of the district.

The Trustees of school district No. 4 in the town of Massena, *against* the Commissioners of Common Schools of said town.

When a new district is formed and goes into operation before the apportionment of school moneys is made it must receive its share of those moneys.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *May 4, 1835.* On the fifth day of March last a division of school district No. 4 in the town of Massena, went into effect. By this division a new district was created and called district No. 15. On the 7th day of April the commissioners of common schools of the town of Massena apportioned to district No. 15 so much of the public money allotted to the two districts according to the annual report of district No. 4 as the first mentioned district appeared to be entitled to, according to the number of children between 5 and 16 years of age residing in it. From this apportionment the trustees of district No. 4 appealed.

It is alleged in the affidavit of John E. Perkins, one of the trustees of district No. 4, that by a vote of the district, before its division by the commissioners, three-quarters of the public money

were to be applied to the winter school, which commenced on the first day of December and continued three and a half months; and that as the commissioners apportioned to No. 15, \$19.82, and to district No. 4, \$22.59, the latter will only be able to apply to the winter school, which has been kept for the common benefit of all, three-quarters of \$22.59, instead of three-quarters of \$42.41. It may be proper to remark, for the information of the trustees of district No. 4, although it does not touch the main question to be disposed of by the Superintendent, that they have no right to apply to the payment of the teacher any portion of the public money received in April, as a compensation for services rendered previously to the first day of January last. The Superintendent has repeatedly declared that the public money must be paid to qualified teachers for services rendered during the year in which the money is received.

As to the duty of the commissioners to make the apportionment as they have done there can be no doubt.

This is a case arising under the provisions of sec. 26 of the statute entitled "Of Common Schools." Although the commissioners may have issued their order previous to the first of January last the alteration did not, as is admitted by the trustees of No. 4, take effect until the 5th of March. District No. 4 was not duly altered within the meaning of the statute until that day. This is, therefore, a case in which a new district was formed after the annual reports from the districts were received, or before the apportionment of school moneys was made. It was the imperative duty of the commissioners to make the apportionment to these districts, according to the number of children in each over the age of five and under sixteen years; and they have discharged the duty in a manner which must be admitted to be just, according to the evidence furnished by the trustees of district No. 4 in their annual report.

The amendment of the 26th section of the statute referred to by the act of 21st April, 1831, is intended to apply to cases in which a school district has gone into operation before the first of January, but in which there has not been time, previous to that day, to have a school taught for three months. The case under consideration does not come within the amendment; and if it did the duty of the commissioners would be precisely the same, as the amendment merely extends the provisions of section 26 to a new class of cases.

The Superintendent regrets that he cannot issue an order in accordance with his own views of the equity of this case; but the requirements of the law are so clear that he cannot venture to make a decision which conflicts with them.

It is accordingly ordered, that the appeal of the trustees aforesaid be dismissed, and the apportionment made by the commissioners be, and it is hereby sustained.

The Trustees of school district No. 2 in the town of Eaton, *ex parte*.

If a trustee refuses to serve, the district may elect another person to the office.

The facts of this case are stated in the opinion of the Superintendent.

By JOHN A. DIX, May 5, 1835. At the annual meeting in district No. 2 in the town of Eaton, held in October last, three trustees were elected for the ensuing year. Two of the persons elected were present and accepted, and the meeting was regularly adjourned to a day in the next week. At the adjourned meeting, Bartholomew, the third person elected trustee, came in and declined serving. The inhabitants present at the meeting, on a motion to that effect, voted unanimously that he should be excused, and they then proceeded to elect Samuel Sherman to fill the vacancy.

The question submitted is, whether the election of Sherman is legal?

I am of opinion that it is. Sec. 71, page 480, 1 R. S. provides for filling vacancies in school district offices in the usual manner, in case such an office is vacated by death, "refusal to serve," &c. I consider this a vacancy caused by the refusal of the individual elected to office to serve therein, and it was filled in the mode provided by law. The inhabitants of a school district have, it is true, no authority, after filling an office, to excuse the individual chosen to it from serving therein: and I regard the vote to that effect in the case of Bartholomew, as no farther material than as affording a justification for him, in case he should be prosecuted for the penalty annexed by sec. 72 (vol. and page before referred to) to a refusal to serve. In such a case the vote of the meeting would doubtless go far in the mind of the court, before which such prosecution should be made, to show a "sufficient cause" for refusing to serve, although he might be put upon showing reasons for so refusing, independently of any action of the meeting in the case.

The legality of Sherman's election depends altogether on the existence of a vacancy. On this point I entertain no doubt.—He was lawfully elected; and if another vacancy has occurred by a removal out of the district, he and the remaining trustee should call a special meeting of the inhabitants to fill it.

The Trustees of school district No. — in the town of Smyrna, *ex parte*.

Trustees may require a bond of the collector whenever a warrant is delivered to him for collection.

If the trustees do not require a bond of the collector he may execute a warrant without giving one.

Quere.—Whether the bond given by a collector when about to execute a warrant, is a security for the faithful execution of the duties of his office generally.

The Superintendent was desired to state in this case whether a collector could execute a warrant without giving a bond, and whether the trustees were bound to exact a bond from him whenever a warrant was delivered to him to collect a tax.

By JOHN A. DIX, May 9, 1835. The collector of a school district must give a bond to the trustees whenever required by them, "conditioned for the due and faithful execution of the duties of his office." The exaction of the bond would seem, from the language of the law, to be a matter of discretion with the trustees; and if it is not required by them, the collector may go on and execute warrants entrusted to him without giving security. They may require a bond to be given by him whenever any warrant is delivered to him for collection; and although the bond is conditioned generally for a due and faithful execution of the duties of his office, it may be questionable whether it is binding, excepting for the specific purpose for which it is given, that is, to secure the execution of the warrant about to be received by him. It is therefore clearly proper to exact a bond whenever a warrant is to be delivered to him, provided the sum to be collected is of such an amount as to render it of any consequence; and if, through the omission of the trustees to require it, any moneys should be lost, they would be wholly inexcusable for failing to take a precaution, which the law has provided for the express purpose of affording entire security to the district.

The Trustees of school district No. 2 in the town of Pendleton, *ex parte*.

If a collector gives a bond, and after collecting part of a tax resigns, quere, whether he is not liable, if the whole amount is not collected.

In this case it was stated to the Superintendent that the collector of the district had given a bond and received a warrant for execution, and that, after having collected part of the tax, he had resigned his office. The opinion of the Superintendent as to the liability of the collector for the balance, and the course to be taken by the trustees, was requested.

By JOHN A. DIX, May 11, 1835. If the collector of your district has resigned, you have a right to call a meeting to

appoint another person to fill his place. Has he resigned agreeably to section 33, page 348, 1 R. S.? that is, has his resignation been accepted by three justices of the peace of the town? If not, he is not out of office. Even if his resignation has been so accepted, it may be worthy of consideration, whether, after having given bonds to collect and pay over a specific tax, he is not liable, under those bonds, in case any moneys should be lost to the district by a failure to collect them within the time limited in the warrant delivered to him. The case is still stronger against him, from the fact that he has partially executed the warrant by collecting a portion of the tax. If there has been any neglect on his part, he is clearly liable under sec. 108 of the act relating to common schools (even if his resignation has been legally accepted) for the whole amount of moneys which might have been collected within the time limited in the warrant delivered to him for their collection, unless those moneys shall hereafter be collected; and the trustees may prosecute his bond to recover the amount.

(ANONYMOUS.)

The exemption of indigent persons from the payment of rate bills is a matter of discretion with trustees.

The following question was submitted for the opinion of the Superintendent:

"Are not all persons who have not more property than the law exempts from execution, indigent or poor persons, according to the intent of the school act?"

By JOHN A. DIX, May 19, 1835. Persons who have not more property than the law exempts from execution, are not necessarily indigent persons. By existing laws, warrants annexed to rate bills are to have the effect of warrants issued by the board of supervisors to the collectors of towns. Such warrants reach property which is by law exempt from execution.

The exemption of indigent persons from the payment of the wages of teachers is a matter of discretion with the trustees, not regulated by any specific restriction, but entrusted to them to be disposed of in good conscience, and with a just regard to the rights of all concerned.

The Trustees of school district No. 7 in the town of Spencer, *ex parte*.

If the annual meeting in a school district is neglected, the district officers hold over until the next annual meeting.

By JOHN A. DIX, May 19, 1835. I find on the records of my office a communication in the following words: "If the usual

time for an annual meeting in a school district passes by, the district officers elected the year before hold over another year. No meeting can be called (until the usual time comes round again) for electing district officers unless vacancies occur, except by order of the Superintendent of Common Schools."

This opinion, which was given to you in answer to an inquiry addressed to me, is in conformity with the repeated decisions of my predecessor in office, and is founded upon the construction given by him to certain provisions of law, to which I will proceed to refer you. It is proper to add that I have concurred in this construction, and thus it has become a rule for the determination of all questions of the same nature, arising under the common school act and brought before the Superintendent for adjudication.

The 70th sec. page 480, 1 R. S. provides that "the clerk, trustees, collector," &c., "shall hold their respective offices until the annual meeting of such district next following the time of their appointment, and until others shall be elected in their places."

This provision recognizes the right of district officers to hold over beyond the next annual meeting after their appointment, unless others are elected in their places. If the inhabitants of school districts have not the right to elect new officers at a special meeting called by the trustees, excepting in cases of accidental vacancies, which are specially provided for, the district officers thus holding over beyond the annual meeting following their appointment, must hold until the year is fully expired and another annual meeting occurs, unless the Superintendent of Common Schools, on an appeal to him, should order an election, in which case, his decision being final in the premises, a new appointment of officers would be valid.

By the 61st sec. sub. 3, page 478, 1 R. S., the inhabitants of school districts have power "to choose a district clerk, three trustees and one district collector at their first meeting, and as often as such offices or either of them become vacated."

The construction given to this provision in connection with the one first quoted is, that the legislature intended to authorize the inhabitants of school districts to appoint officers once in each year, and at the regular annual meeting in such year, and at no other time, unless a vacancy should occur by resignation, removal, death, refusal to serve, &c. In such cases, a special meeting may be called pursuant to the authority given by the last quoted provision of the statute and recognized by sec. 71, page 480, 1 R. S. If an annual meeting passes by without an election, and the persons serving at the usual time for holding said meeting continue in the performance of their duties after that

time, there would, according to the decision of the Superintendent, be no vacancy until the next annual meeting, unless one of the contingencies mentioned in section 71 before referred to, should occur. It seems to me that the language of the statute fairly sustains this construction; and so far as the public interest is concerned it is highly important that it should be sustained. Immediately after the annual meetings the trustees of school districts are, in most cases, in the habit of making their arrangements for hiring teachers and opening schools, and if new officers are not appointed at the proper time, others should not be allowed to come in and disturb proceedings which are in a course of execution.

The Superintendent of Common Schools has no power to interfere with the determinations of other tribunals. His decisions are final with regard to the special cases in which they are pronounced. Other tribunals have an equal right with the Superintendent to put their own construction upon the provisions of the statute, and in matters coming within their jurisdiction to lay down principles at variance with those which govern him in his determinations. That his decisions should be treated with some deference on account of the special supervision which the law gives him over controversies arising in school districts, and indeed in all matters arising under the title of the statute relating to "common schools," may reasonably be expected; and while they ought to be set aside by other tribunals when deemed repugnant to the express provisions of law, it will doubtless be deemed desirable, if not proper, to sustain his constructions of the statute referred to, in all cases where there is any just ground for a difference of opinion.

The Trustees of school district No. 2 in the town of Granby, *against* the Commissioners of Common Schools of said town.

If a district entitled to receive the public money is dissolved, and part of it annexed to a district not so entitled, the latter can receive no public money in consequence of such accession.

The facts of this case are stated in the Superintendent's decision.

By JOHN A. DIX, *May 20, 1835.* The Superintendent of Common Schools has examined the statement of facts submitted to him by the trustees of school district No. 2 in the town of Granby and the commissioners of common schools of said town, in reference to the claim of said district to a distributive share of the public moneys for the present year, which claim has been denied by the commissioners.

The facts agreed on are as follows :

In November, 1834, the commissioners of common schools of Granby annulled district No. 10, and annexed a part of it to No. 2. District No. 10 had, at the time of its dissolution, complied with the requirements of the statute for the year 1834, so that its trustees would, if it had continued in existence, have been able to make out an annual report, on which it would have been entitled to receive a distributive share of the public moneys for the year 1835.

District No. 2 was not and is not able to make an annual report for the year 1834, on which it could have received or can receive a share of the public money for the year 1835.

The questions submitted to the Superintendent are, 1st. Whether district No. 2 is entitled to receive any public money for the present year? and 2d. Whether, if it is entitled to receive any, the apportionment should be made in reference to the whole number of children residing in it, or to the number set to it from district No. 10?

The equity of this case is clear. District No. 2 ought to receive the public money, which the children, set to it from No. 10 would have received had the latter district not been annulled, and the money should be appropriated solely to the benefit of those children. But it unfortunately happens in this case, as in others of equal hardship, that the express provisions of the statute, which the Superintendent has no power to supersede by a construction at variance with the terms of those provisions, render any allowance of public money to district No. 2 impossible. District No. 10 was not in existence on the first of January last. It was wholly dissolved and merged in other districts, the arrangement having taken effect immediately, by consent of all the parties concerned. The portion of the district, which was added to No. 2, became a part of the latter on the day it was so added, and by virtue of the union it was entitled to participate in all its rights and became subject to all its liabilities. These rights and liabilities should have been ascertained before the arrangement was entered into and assented to by district No. 10: but either through neglect or inadvertence that portion of it belonging to No. 2 has been thus divested of a right, which it might unquestionably have asserted as a part of the former, had it retained its organization. There is now no remedy. The statute provides that "in making the apportionment of moneys among the several school districts, no share shall be allotted to any district," &c. "from which no sufficient annual return shall have been received," &c. The Superintendent has given to this provision a construction which admits of the correction of errors, and even of furnishing a new report, where one has been mislaid.

But it is acknowledged in this case that a sufficient report cannot be made by district No. 2 for the year 1834, although the responsibility is alleged by the present trustees to rest with their predecessors, who are said to have been guilty of unpardonable negligence.

The Superintendent regrets that there is no remedy for that part of district No. 10 now belonging to No. 2; but the law is imperative, and it must be complied with. It is proper to add, that if district No. 2 were to receive a portion of the public money on account of the children set to it from No 10, it could not be applied exclusively to the benefit of those children. The provisions of the law with regard to the application of the public moneys are such that it would necessarily go to the benefit of the whole district.

By the statement of the commissioners annexed to that of the trustees of district No. 2, it would appear, that the trustees of that district in 1834 paid the public moneys to a teacher or teachers not qualified according to law. If this fact can be proved, the trustees making the payment should be prosecuted by their successors for the amount so paid, as a balance remaining in their hands. The Superintendent has decided that a payment of the school moneys received from the commissioners of common schools to teachers not qualified as required by the statute, is not a payment in law, and that the trustees making such payment will be answerable to their successors in office, under section 102, page 486, 1 R. S. for the amount so paid, as an unpaid balance remaining in their hands.

It is hereby ordered, that the appeal of the trustees of school district No. 2 aforesaid, from the decision of the commissioners of common schools of Granby, in refusing to apportion to said district a part of the public moneys for the year 1835, be, and it is hereby, dismissed.

The Inhabitants of school district No. 5 in the town of Hornby, *ex parte*.

Taxes must be paid in money.

In this case a tax was voted for building a school-house, with a direction to the trustees that any person who might furnish materials should be credited on the tax-list for the value of the materials so furnished, in reduction of the amount of his tax.—The Superintendent was desired to state whether such a proceeding was legal.

By JOHN A. DIX, May 20, 1835. Taxes must be collected in money from all the persons liable to pay them. No man can

be allowed to commute by furnishing materials for a school-house. But if any individual furnishes materials, he is entitled to a fair compensation in money for them; so that, in fact, although he must pay his money to the collector he will receive it back from the trustees. At the same time it is necessary to preserve the regular form of proceeding, and the collector is entitled to his fees on the whole amount of the tax if he can collect it.

The Commissioners of Common Schools of the town of Henderson, *ex parte*.

Every person set off to a new district is entitled to his share of the value of the school-house from which he is taken, whether he has contributed to its erection or not.

The commissioners of common schools of the town of Henderson, intending to divide a school-district and form a new one, applied to the Superintendent to know whether it was proper to allow to persons set off to the new district, any portion of the value of the school-house, if they had not contributed to its erection.

By JOHN A. DIX, *May 29, 1835*. Whenever a new school district is formed, it is entitled to receive from the district from which it is taken, a portion of the value of the school-house and property of the latter. The proportion is to be ascertained by a comparison of the value of the taxable property of the persons set off to the new district, with the amount of the taxable property of the persons remaining in the old district or districts, out of which the new one is formed. This is the course required by law to be pursued; and although it may, and doubtless does, sometimes operate unequally and unfairly, it must be adhered to. Thus a person set off from an old district to a new one, at the time of the formation of the latter, will carry to the new one for his own benefit a portion of the value of the school-house of the old district, although he may have become a member of the old district after the school-house was built, and thus contributed nothing to its construction. The operation of the law, as I have already said, may in some cases, prove inequitable; but the only remedy is for the commissioners in such cases to abstain from forming a new district, unless the persons situated as above mentioned voluntarily relinquish their claim to a benefit to which they are not entitled on principles of equity. If the commissioners go on and form the district, the matter is beyond their control and the requirements of the law must be complied with.

The Trustees of school district No. 5 in the town of Belfast, *ex parte*.

Trustees are answerable only for such moneys as come into their hands.

In October, 1833, A, B and C were elected trustees of school district No. 5 in the town of Belfast. A received the public money apportioned to the district in April, 1834, and paid B five dollars, which by an understanding between them at a subsequent time was to be passed to the credit of A on a private account between them. A subsequently absconded with the balance of the public moneys in his hands. Under these circumstances the direction of the Superintendent was requested by the successors in office of A, B and C.

By JOHN A. DIX, June 3, 1835. There is no remedy for the defalcation of A. He is personally liable; but if he has absconded and cannot be reached, the money in his hands will be lost to the district, as his colleagues are answerable only for so much as they severally received.

The five dollars paid by A to B can be recovered of the latter. If it was paid to him as public money, the subsequent agreement to pass it to the credit of A on a private account is not only illegal but fraudulent in both parties. If the facts alleged can be proved, B should be prosecuted immediately for the five dollars, as an unpaid balance remaining in his hands, by the present trustees of the district. He had better pay it, and save costs.

The Trustees of school district No. — in the town of Solon, *ex parte*.

If the votes of the individuals in favor of a site for a school-house, are procured by appeals to their pecuniary interests, the proceedings will be set aside.

In this case a vote was taken at a meeting of the inhabitants of the district to change the site of the school-house. The vote was passed by a majority of two, and it was alleged that two persons who were opposed to the removal of the school-house voted in favor of it.

By JOHN A. DIX, June 20, 1835. If the district has been altered, and the alteration has actually taken effect when the vote to change the site is given, a majority of votes is sufficient. But if that majority has been procured by appealing to the pecuniary interests of one or more voters, as by offering to pay their tax if they will vote in a particular manner, I should most certainly, on proof of the facts, set aside the proceedings. All such bargains are fraudulent and corrupt. In school district concerns, as in all other cases, the exercise of the right of suffrage should be unbiassed and free from all pecuniary influences.

The Trustees of joint school district No. 6 in the towns of Tyrone and Barrington, *against* the Commissioners of Common Schools of the town of Barrington.

A school district reported to the Superintendent from the year 1822 to 1835 was held to have a legal existence, though the record of its organization was signed by only one of the commissioners of common schools.

The consent of the trustees of a joint district to an alteration, does not authorize the commissioners of one town to make it without the concurrence of the commissioners of the other.

The facts of this case are stated in the order of the Superintendent.

By JOHN A. DIX, *June 22, 1835.* This is an application to the Superintendent of Common Schools from the trustees of joint school district No. 6, lying partly in the town of Tyrone and partly in the town of Barrington, for some direction in the matter of the proceedings of the commissioners of common schools of the last mentioned town, in refusing to apportion to said district, out of the public moneys belonging to the town, the amount it was entitled to receive under an order of the Superintendent, dated the 12th day of June, 1834.* To this application an answer has been made by the said commissioners; and although the matter in dispute has been disposed of, after full consideration, by the order referred to, he will proceed to state his views in relation to the reasons assigned by the commissioners for disobeying his directions. He is desirous that no misapprehension should exist as to the opinion which he entertains with regard to the position they have thought proper to take. To facilitate a correct understanding of the questions at issue, it will be necessary to enter into a brief detail of the circumstances connected with the organization of district No. 6, and the changes which it has undergone at subsequent periods of time.

District No. 6 was organized as a school district lying wholly in the town of Wayne in the county of Steuben, on the 15th April, 1817. Although the language of the order imports that it had the concurrence of the commissioners of common schools of the town, and although a description and designation of the boundaries of the other school districts in the town were given in the same order, it appears by the records of the town to be signed by only one of the commissioners.

On the 9th day of June, 1819, the commissioners of common schools of the town of Wayne, made a new designation of the

* See the case of the trustees of joint school district No. 6 in the towns of Tyrone and Barrington, *against* the commissioners of common schools of the latter town, page 172.

boundaries of some of the school districts in the town, by an order commencing as follows: "We, the commissioners of common schools, in and for the town of Wayne, have this 9th day of June, 1819, altered the boundaries of the following school districts in manner following," &c. Among the districts thus altered is No. 6, the boundaries of which are minutely described, commencing at a given point and following the outlines of the district to the place of beginning. The order is signed by two of the commissioners of common schools, and is recorded by the town clerk.

By an act of the legislature, passed the 16th day of April, 1822, (laws of 1822, chapter 237,) the town of Wayne was divided, and the towns of Barrington and Tyrone formed out of parts of it. By virtue of this act, which took effect from the last day of February, 1823, district No. 6 became a joint district of the towns of Barrington and Tyrone, as its territory was included partly within the boundaries of each of those towns.

On the 5th day of January, 1833, the commissioners of common schools of the town of Barrington, formed a new school district under the name of district No. 8, to which they assigned or set off all that part of joint district No. 6, which was included within the boundaries of the town of Barrington. The trustees of joint district No. 6 gave their consent in writing to the formation of district No. 8 in Barrington, but the commissioners of common schools of the town of Tyrone did not concur in the alteration of No. 6, nor does it appear that any attempt was made to procure their attendance.

By the order of the Superintendent of Common Schools bearing date the twelfth of June, 1834, it was decided "that the proceedings of the commissioners of common schools of the town of Barrington, in annexing to school district No. 8 certain inhabitants belonging to joint district No. 6 in Barrington and Tyrone, on the 5th January, 1833, are void and of no effect, and that said inhabitants still belong to said joint district." It was also decided that the commissioners of the town of Barrington should apportion to joint district No. 6 out of the next public moneys which should come into their hands, the sum which said district should have received on the first Tuesday of April, 1834, according to the principles of the decision then pronounced.

The directions contained in this order have been set at defiance by the commissioners of Barrington. They have not brought up the question thus disposed of for a re-consideration upon an allegation of errors in the facts or arguments on which the decision of the Superintendent was founded, nor have they made any application to him for a rehearing, with a view to the production of newly discovered evidence. On the contrary, they

have wholly disregarded his order and refused to obey the directions contained in it, although his decisions are declared by law to be final in all matters of controversy relating to common schools, which are brought before him for adjudication.

Before entering into an examination of the reasons assigned by the commissioners for the course they have taken, it may not be improper to refer to the objections raised by them to the relief asked for in this case, on the ground that the application was not made within thirty days after their refusal to apportion to joint district No. 6 its proper share of the public money according to the principles of the Superintendent's decision. In ordinary cases, the established rule would be enforced, and the objection so far entertained, as to require the applicants to show a sufficient reason for their failure to comply with the regulation. But in this case it cannot be allowed to prevail even to the extent referred to. The limitation of time by the regulations of the Superintendent in matters of appeal brought before him, is not intended to apply to proceedings void for want of jurisdiction, or to cases of refusal on the part of those who are concerned in the administration of the common school system, to execute his decisions. In all such cases the parties injured will be allowed to seek redress at any time, provided the rights of others are not prejudiced by the delay, and that the application for relief is not barred by express provisions of law. In the case under consideration, the applicants addressed a letter to the Superintendent soon after the decision complained of was announced by the commissioners, not supposing that the occasion was such a one as to call for an appeal in the usual manner; and it is by the advice of the Superintendent that the application is made in its present form, and with the understanding that the lapse of time, which occurred in writing to him and receiving his answer, would not be permitted to operate to their prejudice.

In the answer of the commissioners to the appeal which led to the decision contained in the Superintendent's order of the 12th June, 1834, it was not alleged that the organization of joint district No. 6 was defective in its origin. The legal existence of the district was not at that time directly impeached. But it is now contended that inasmuch as the order of the 15th April, 1817, forming that district, was signed by only one of the commissioners, the district was not legally organized, and that it has not since that time acquired a legal existence. In reply to this argument, it is sufficient to say, that the provision in the act of the 15th April, 1814, laws of 1814, chap. 192, sec. 11, requiring the commissioners of common schools immediately after the formation or alteration of any school districts to describe and number the same, and to deliver the description and num-

ber thereof in writing to the clerk of the town, to be by the latter recorded in the town records, is merely directory to those officers; and the Superintendent has frequently decided, that the failure of the commissioners to describe a district in writing, or the omission by the clerk to put the description on record, should not be deemed fatal to the existence of the district, if its existence as a district for a length of time could be proved by other evidence. This is, it is true, a case of a different character. The record is not wanting, but it does not show on its face a sufficient authority to form the district. It is however to be considered that eighteen years have elapsed since this proceeding was put on record; that the records in the office of the Secretary of State show the district to have been regularly reported to him by the commissioners of common schools as a legally organized district as early as the year 1822; that its legal organization has not until now been impeached; and that the commissioners do not deny that it has, since the year 1819, held its annual meetings, made its reports, and received its public money from the town of Wayne while it belonged thereto, and from the towns of Tyrone and Barrington since they have been erected, except from the town of Barrington for the last two years. The record of the town of Wayne need not be presumed to be erroneous, so far as the organization of the district is concerned; but it will be presumed, under all the circumstances referred to, and upon the evidence furnished in the annual reports of the commissioners of common schools, that the district has a legal existence: and as it has for eighteen years complied with the requirements of the law, and its rights as a district have been acknowledged by all concerned until the occurrence of the present controversy, the Superintendent will not allow its organization to be disturbed excepting in the mode prescribed by law. He will not allow the records in his office for a series of years to be impeached on the ground that those of the town of Wayne are defective in a single instance. So far as questions of boundaries are concerned, the records of the town with regard to school districts must be deemed of the highest authority. But where the legal existence of a school district is called in question, and the reports of the commissioners of common schools of the town for a succession of years show that the district has complied with the requirements of the law, that it has been recognized as an organized district, and received the public money, equity demands that the testimony furnished by those reports should prevail so far as to save and maintain the rights of the district.

With regard to the order of the 9th June, 1819, altering the boundaries of district No. 6 and describing them anew, it is alleged by the commissioners, that as the record of the organiza-

tion of the district on the 15th April, 1817, is signed by only one of the commissioners of the town of Wayne, and as the concurrence of a majority was necessary to give validity to the proceedings, the district never had a legal existence, and, as a consequence, that the act of the commissioners on the 9th June, 1819, which professed to have for its object an alteration of the district, was null and void, because that which did not previously exist could not be altered. Whatever force this reasoning might have under different circumstances, it is to be considered that the entire boundaries of district No. 6 were on the last occasion carefully defined, and that the specific alteration made in it does not appear except by a comparison of those boundaries with those set forth in the order of 1817 under which the district was organized. This act would in the absence of the record of 1817, afford presumptive proof of the legal organization of the district at a previous time. It is now deemed conclusive, as far as the admission of the commissioners is concerned, with regard to its legal existence at the time of the alteration. With what propriety can they or their successors come in and deny that the district had a legal existence, when the act of altering it clearly admitted its existence? The order in question contained a new specification of boundaries, not in No. 6 alone, but in several other districts. An extension or contraction of the boundaries of one school district necessarily involves an alteration of the boundaries of one or more adjacent districts; and from the time the order of 9th June, 1819, was issued, district No. 6, and all the other districts affected by the alterations contained in the order, were considered legally organized districts with the limits then defined. The commissioners are, therefore, concluded by their own acts from denying the legal existence of any of these districts; and they are also estopped from objecting that district No. 6 was not formed in the manner prescribed by law by the reports of their predecessors, in which it is returned to the Superintendent of Common Schools as a regularly organized district.

It is also objected that the consent of the trustees of district No. 6 does not appear to have been given to the alteration made on the 9th June, 1819: that there is no evidence of notice to the trustees that the alteration has been made as required by law when such consent is not obtained; and that the proceedings were null and void on these grounds. By referring to the laws of the state in relation to the common schools passed at various periods, the commissioners will perceive that neither the consent of the trustees nor a notice to them was required when the alteration referred to was made. The act making such consent or notice requisite was passed on the 12th April, 1819; but it was provided by the 37th section of that act that the acts of April 15, 1814, and

April 18, 1815, should be repealed from the first day of July' then next ensuing; and that all acts done under the provisions of the laws referred to, until the 1st of July should be and continue thereafter good. The alteration in district No. 6, to which exception is at this late day taken, for want of evidence of the consent of, or notice to, the trustees, was made on the 9th of June, 1819, under the act of April 15, 1814; and by the 11th section of this act commissioners of common schools had power to alter school districts in their respective towns, between the 10th of April and the 10th of June in each year, without the consent of the trustees, and without any notice to them. There was, therefore, a strict compliance with the requirements of the law in this respect, so far as the facts are disclosed.

The consent of the trustees of joint district No. 6 to the alteration which was made by the commissioners of the town of Barrington on the 5th of January, 1833, could not give the latter jurisdiction. The law has prescribed the manner in which a joint district shall be altered. Each town of which the district is a part is concerned in its preservation, and it is only with the consent of the commissioners of common schools of each town that its boundaries can be enlarged or diminished, excepting where the commissioners of one town refuse or neglect to meet the commissioners of the other, when their attendance has been required. The trustees could not, by consenting to the alteration, enable the commissioners of Barrington to act alone, and thus divest the commissioners of Tyrone of the right which the law gives them, of passing judgment upon the proposed measure. Nor will it be presumed that such was the intention of the trustees. On the contrary, the only legitimate presumption which can arise from the facts is, that the trustees intended to consent to the alteration when it should be made according to the requirements of the law.

Under whatever aspect the case is considered the Superintendent sees no reason for coming to a conclusion different from that at which he arrived on his first examination of it. Joint district No. 6 has now the same boundaries which it possessed at the time, (previous to the 5th January, 1833,) when the commissioners of Barrington undertook to alter it. That district is entitled to receive, according to the principles of the Superintendent's decision contained in the order of the 12th June, 1834, out of the public moneys apportioned to the town of Barrington the sums which were allotted in 1834 and 1835 to district No. 8, on account of the children residing in that part of joint district No. 6 which lies in the town of Barrington, and which the Superintendent has declared to belong to the latter district. The Superintendent has no authority by law to enforce the execution of his own or-

ders and decisions. The commissioners of common schools, as public officers, are amenable to the authority of the supreme court, which would, on showing sufficient cause, grant a mandamus requiring them to comply with the directions of the Superintendent, and allow an attachment against them to issue in case of refusal. Having exhausted his powers, the Superintendent can only refer the trustees of joint district No. 6 to that tribunal for relief, in case the commissioners refuse to carry his order into execution, with the assurance that any aid which it is in his power to lend will be freely afforded in the prosecution of the necessary remedies.

(ANONYMOUS.)

Trustees are sole judges of the ability of a person to pay his school bills. A resident cannot be prosecuted by trustees for a tax or for tuition bills.

By JOHN A. DIX, *June 22, 1835.* The trustees of school districts are the sole judges of the ability of the persons residing within their respective districts to pay their school bills.

With regard to residents there is no power to prosecute. The warrant annexed to the tax list or rate bill may be renewed with respect to residents, and with respect to non-residents a prosecution may be commenced by the trustees, if they refuse to pay, and no goods and chattels can be found within the district on which to levy or distrain. A resident cannot be prosecuted. The only remedy against him is by distress and sale of his goods and chattels. Rate bills as well as tax lists are now collected by distraining, where the party assessed does not pay voluntarily.

A court would not, on a prosecution for a tax or a tuition bill allow the party to prove his inability to pay. If the trustees have exempted him from the payment, it is a complete defence. But if they have not so exempted him the court would be bound, on showing the debt, to give judgment against him for the amount. His inability to pay is a matter to be tried by the execution of the warrant, or the execution on a judgment rendered by a court. If he has no goods and chattels, of which a levy or distress can be made, the matter is ended. If he has, he is clearly not unable to pay, and this is a question a court cannot determine in anticipation of such a test. The trustees might so determine it, and when they have done so, by refusing to exempt him, the test must be by the warrant, or by execution where a judgment is obtained in a suit brought by the trustees.

The Trustees of school district No. 20 in the town of New-Paltz, *against* the Commissioners of Common Schools of said town.

The bad management of the affairs of a district is not a sufficient reason for setting off an inhabitant.

A district ought not to be altered for the temporary convenience of an individual.

The facts of this case are given in the Superintendent's order.

By JOHN A. DIX, *June 24, 1835.* The Superintendent of Common Schools has examined the appeal of the trustees of school district No. 20 in the town of New-Paltz, from the proceedings of the commissioners of common schools of said town, in setting off Josiah Dubois from said district to district No. 14, on the 31st day of March last. The Superintendent has also examined the answer of the commissioners to said appeal, and the accompanying affidavit of Josiah Dubois, setting forth his reasons for desiring to be annexed to district No. 14.

The principal reasons assigned by Mr. Dubois for desiring to be set off from No. 20 are; 1st, That the affairs of the district are badly managed; and 2d, That the school-house in No. 14 is near the New-Paltz academy, and that as he sends his elder children to the academy, it is more convenient to send his younger children with them to the school-house referred to than to send them into No. 20.

The first of these reasons is wholly inadmissible as a ground for setting off a single inhabitant to another district. If the affairs of a school district are improperly managed, the true remedy is to elect new trustees, and confide the trust to abler or more faithful hands. If a school-house has an inconvenient position, the site should be altered in the mode prescribed by law. But it is manifest that if individuals may be set off from one district to another for such causes, there would be no assurance that any district would retain its organization from year to year.

The second reason, though it has more weight, is not, in the opinion of the Superintendent, sufficient to warrant a change in the boundaries of a school district. The condition of Mr. Dubois' family is accidental, and can be but temporary. The time will come, and it may be near at hand, when his older children will have completed their education and his younger children be old enough to attend the academy. If this were now the case, he would have no interest in being set off from district No. 20. If he were to remove from his present residence, and an inhabitant were to succeed him with children too young to be sent to the academy, the latter would undoubtedly desire to continue in No. 20, as the school-house is much nearer than that of district No. 14. The organization of school districts should not be disturb-

ed for light or temporary causes. As population increases and settlement extends, alterations in their boundaries frequently become necessary. But a single individual ought not to be set off from one district to another for his temporary accommodation, excepting in cases where the condition of the two districts to be affected by the change concurs in demanding it.

Let us see whether this case comes within the class of exceptions referred to.

District No. 20 has a taxable property of \$48,641, and 63 children between 5 and 16 years of age. If Mr. Dubois should be set off to district No. 14 from No. 20, the latter will be reduced to 59 children between the ages referred to, and to a taxable property of \$42,491, and the former will have 71 children and \$102,526 of taxable property. Although both districts would, after the alteration, be capable of maintaining a respectable school, the circumstances of the case are not, in the opinion of the Superintendent, so strong as to warrant a change, which is on its face unequal as between the two districts.

The Superintendent regrets that he is compelled to differ with the commissioners of common schools in the view he has taken of this case. But, after conceding to them the advantage of a more familiar acquaintance with the local condition of the districts and the parties interested in the matter submitted to him, he cannot, consistently with the principles which have governed his decisions in like cases, confirm their proceedings. He has no doubt that they have acted in obedience to the suggestions of duty, and under the conviction that Mr. Dubois might be accommodated without prejudice to the just rights of district No. 20. But after giving to every case presented to him the best examination of which he is capable, he is bound, like themselves, to act in accordance with his own convictions of duty.

The proceedings referred to are set aside, and Mr. Josiah Dubois is restored to district No. 20.

The Commissioners of Common Schools of the town of Cohocton, *ex parte*.

Trustees are bound to send or deliver their annual reports to the town clerk.

Quere? Whether two commissioners can make a valid apportionment of the school moneys?

An apportionment of the school moneys after the time prescribed by law is good.

In this case the trustees of a school district handed the annual report to one of the commissioners of common schools, who neglected to attend the meeting for the apportionment of the public moneys. The moneys were apportioned by two of the commissioners, and the report of the district referred to being in the

hands of the absent commissioner, no money was allotted to the district. The opinion of the Superintendent as to the legality of these proceedings was solicited.

By JOHN A. DIX, *June 30, 1835.* It is the duty of the trustees of school districts to deliver their annual reports to the town clerk, (sec. 92, page 484, 1 R. S.) who is, by the provisions of sub. 1, of sec. 43, page 474, 1 R. S. authorized, and indeed bound as a matter of duty, to "receive and keep all reports made to the commissioners from the trustees of school districts," &c. The mere delivery of a report to one of the commissioners would not, I should think, make him legally liable for any loss which might result to a district from a failure or omission on his part to present it at the meeting of the commissioners, on the first Tuesday of April, for the apportionment of the public moneys. The trustees themselves are in default for putting it into his hands; they should deliver it to the town clerk, and in order to make the commissioner, with whom it is left, responsible, it would be necessary to show a special undertaking on his part to have it presented to the commissioners at their meeting to distribute the public moneys.

The question whether two of the commissioners of common schools, without the attendance or consent of the third, can legally apportion the public moneys is a delicate one, and may fairly give rise to a difference of opinion. If the third commissioner has notice of the meeting and his attendance is required, and from any unavoidable circumstance he is unable to attend, or if he absolutely refuses to attend, I think an apportionment by the other two having knowledge of the facts, would be valid.* It seems to me, however, that it is useless to raise this question in the present case. The moneys have been apportioned, and probably for the most part expended by this time. To agitate the question of authority to make the apportionment can, clearly, answer no purpose of justice or equity. An apportionment may, under certain circumstances, be made after the first Tuesday of April. The specification of time is not intended to limit the exercise of the authority of the commissioners. The statute is directory to them; but if the apportionment from any cause is not made on the day specified, it may be made subsequently, and the proceeding will be deemed valid.

* See a case decided 23d July, 1835, next page.

(ANONYMOUS.)

Rate bills for teacher's wages should be promptly made out and collected.

Trustees must make out rate bills from the lists kept by the teacher.

If one of the trustees refuses to unite in making out a rate bill, the other two may act without his concurrence.

If a warrant for the collection of a tax is signed by two trustees only, the presence of the third at the issuing of the warrant will be presumed.

By JOHN A. DIX, *July 23, 1835.* There is no provision of law by which a rate bill for teacher's wages is required to be made out at the expiration of his term. All school bills should be promptly made out and paid, but the time is not limited by law. The teacher must deliver the list of scholars and their attendance kept by him to the trustees, and the latter must make out the rate bill and annex to it their warrant for its collection. If one of the trustees refuses to unite in making out the bill, or to pay his part of it, the other two may act, and the amount due may be collected of him as of any other individual. The supreme court has decided in the case of *McCoy vs. Curtice*, 9 Wendell 17, that a contract made by all of the trustees of a school district, and "signed by two, would be binding; or that two could contract against the will of the third, if he was duly notified or consulted, and refused to act." The decision of the court seems also to sustain the doctrine, that if a warrant be issued by two trustees for the collection of a tax, the presence of the third at the issuing of the warrant will be presumed until the contrary be shown.

The Commissioners of Common Schools of the town of Fort-Edward, *ex parte.*

Commissioners of common schools may certify that more than \$400 is necessary for a school-house, after that sum has been expended.

The inhabitants of a school district in the town of Fort-Edward voted a tax of \$400 to build a school-house. The tax was raised and expended, and the amount was found insufficient to finish the building. The trustees of the district then called on the commissioners of common schools to certify that an additional sum was necessary, in order to procure a vote of the inhabitants to levy it. The commissioners desired to be informed whether they had authority to make the requisite certificate in such a case.

By JOHN A. DIX, *August 15, 1835.* The commissioners of common schools have an undoubted right, under section 64 of the statute entitled "Of common schools," to certify that a larger sum than four hundred dollars is necessary and ought to be raised for the purpose of building a school-house, in cases where that amount has been already expended. In the case

stated in your letter, the true course would be, if the propriety of the measure is clear, to grant a certificate setting forth that the sum of four hundred dollars has been expended on the school-house, that a further sum (specifying it) is necessary to complete it, and that such sum ought to be raised for the purpose. On the exhibition of this certificate at a special meeting of the inhabitants of the district, they may vote the additional sum specified.

It is always desirable that the amount to be expended should be clearly ascertained before the building is commenced, in order that the full sum required may be stated to the inhabitants before they are committed to any expenditure whatever. At the same time the most judicious calculations may be disappointed; and as the authority of the commissioners in the matter referred to is not restricted to any particular point of time or any particular stage of the proceedings, I consider them fully empowered to act in the case stated by you. The inhabitants of a district cannot, of course, vote a sum exceeding 400 dollars for a school-house until after the commissioners have made the necessary certificate.

The Trustees of school district No. 8 in the town of New-Haven, *against* the Commissioners of Common Schools of said town.

In apportioning the value of a school-house when a new district is formed, the omission of one of the persons set off cannot be made a ground of objection to the proceeding by an inhabitant of the old district.

If a written notice of the time, place, and object of a meeting called to organize a school district, is left at the house of one of the inhabitants in his absence, all the others being notified according to law by personal service of the notice, it is sufficient, though the notice so left does not show that the meeting is called by the commissioners of common schools.

If through an erroneous impression as to the title to the site of the school-house, the commissioners appraise it at too low a sum, the proceeding is not void, but may be vacated on an appeal.

Trustees are not entitled to notice of an appraisement until after it is made.

In forming a new district, notice of the alteration may be served on a trustee set off to the new district.

If all the persons set off to a new district relinquish their interest in the school-house in the old district, it need not be appraised.

This was a statement of facts submitted by the commissioners of common schools of the town of New-Haven and the trustees of school district No. 8 in said town, for the Superintendent's opinion. By this statement it was shown that on the 11th of November, 1834, the commissioners of said town divided school districts No. 3 and 5, and formed a new district under the designation of district No. 8, from parts of those districts. The school-house in each district was appraised, and an order made out and

directed to the trustees requiring them to levy on their respective districts the amount to which No. 8 was entitled. A notice for a meeting of the inhabitants of the new district was issued, the meeting was held, and the district organized.

The objections to these proceedings were as follows:

1. One of the inhabitants of school district No. 3 was omitted in apportioning the value of the school-house between that district and the new one. In consequence of this omission the new district received a less amount, by a very trifling sum, than it was entitled to receive from No. 3. No exception was, however, taken by the new district; nor by the inhabitant to whose credit the small sum thus lost would have been passed.

2. In serving the notice issued by the commissioners for the first meeting in the new district, the person serving it not finding one of the inhabitants at home, left a note at his house informing him that a meeting was to be held at a certain time and place to organize the district, but without stating that the commissioners of common schools had called the meeting.

3. When the commissioners apportioned the value of the school-house in district No. 3, they supposed the site was held under a lease for so long a time as the district should use it as such; but it was ascertained subsequently that the fee was in the district. Had this fact been known to the commissioners at the time they made the valuation, they would have put a higher estimate upon the value of the lot.

4. The trustees of districts No. 3 and 5 were not informed of the amount of the valuation of the school-houses until notice of the alteration was served on them.

5. Notice of the alteration was served on one of the trustees of No. 5 who resided within the territory set off to form the new district.

By JOHN A. DIX, *September 18, 1835.* I have carefully examined the statement of facts submitted to me, and am of opinion that the proceedings of the commissioners of common schools in the organization of your school district (No. 8) were legal. Certainly it does not appear to me that there will be any hazard in going on and collecting any tax which may be finally imposed on the district.*

The omission of one of the inhabitants of No. 3, who was set off to No. 8, in the assessment of the value of the school-house and property of the former, is not a good ground of objection on

* In the case of *Reynolds vs. Moore*, 9 Wendell, 35, the Supreme Court decided that in an action of trespass against a collector for taking and selling property under a warrant regularly issued by the trustees of a school district, the plaintiff would not be allowed to show that all the forms prescribed by the statute had not been observed in organizing the district.

the part of any inhabitant of No. 3 as now organized, for the omission was not an injury to that district. Such an objection can only be raised by some person aggrieved, i. e. some inhabitant of the new district.

The notice given by the person who was required to notify the inhabitants of the new district to meet and organize, was sufficient. The notice set forth the time, place and object of the meeting, and this is all the law requires.

The erroneous impression which prevailed with regard to the tenure of the site of the school-house at the time the appraisement was made, does not impair the legality of the appraisement. It might be a good ground of application to the Superintendent to order a new one; but the appraisement now made cannot be set aside in any other manner.

Trustees need not be notified of the appraisement of the property of their district previous to the formation of a new district out of a part of it. It is desirable that they should know when the commissioners meet for the purpose of forming the district; but an omission to notify them does not affect the validity of the proceedings.

It makes no difference whether notice of an alteration made without the consent of trustees, is served on a trustee residing within the territory remaining in the old or that set off to the new district. He continues to be trustee of the former until three months after service of such notice.

When all the inhabitants of a new district voluntarily relinquish their right to a portion of the value of the school-house and property of the district from which they are taken, an appraisement is unnecessary. The appraisement is to be made for their benefit, and if they relinquish their right, there can be no reason for making the appraisement.

(ANONYMOUS.)

Commissioners of common schools cannot fix a site for a school-house.

If the inhabitants agree that the commissioners may select a site, the selection ought to be acquiesced in.

A district may repeal a vote to raise a tax if no proceedings have been commenced in pursuance of such vote.

By JOHN A. DIX, *September 19, 1835.* Commissioners of common schools have no authority to fix a site for a district school-house under any circumstances. The inhabitants of a district may, for the purpose of ending a controversy, agree to refer the matter to them; but in such a case they would act as individuals, and not as official agents of the town or the district, nor would their decisions under such circumstances be final. Sites can only be fixed by vote of the inhabitants, and it appears to

me that such a vote is necessary after the commissioners have selected a point for a site, on a reference of the matter to them, in order to give the proceeding validity and make the site legal. The inhabitants may, after agreeing to such a reference of the question, refuse to ratify the selection or determination of the commissioners. I speak now of the legal right. But certainly after consenting to such an arrangement to terminate a controversy, good faith demands that they should abide the result.

The inhabitants of a district have a right to reconsider former proceedings, and repeal them if they think proper. They may legally repeal the vote of a tax to build a school-house, if no proceedings in relation to its collection have been commenced, and no contracts entered into or responsibilities assumed by the trustees in behalf of the district in pursuance of such vote.

(ANONYMOUS.)

Persons worth fifty dollars may vote and must be taxed, though they may have been omitted in the town assessment.
It may happen that persons not liable to be taxed in a school district, are entitled to vote to raise taxes on the district.

By JOHN A. DIX, *September 24, 1835.* It is submitted whether the persons not on the assessment-roll of the town, who have personal property of the value of fifty dollars over such as is exempt from execution, may be taxed, or may vote at school district meetings? Such persons are undoubtedly liable to contribute their proportion of any tax levied on the district for common school purposes, and should be included in the tax list made out by the trustees in every such case, although they may have been omitted in the assessment roll of the town. They are also entitled to vote if they have personal property, over such as is exempt from execution, to the amount of fifty dollars liable to taxation in the district, whether they are included in the town assessment or not. So it may happen that persons in a school district may be entitled to vote to lay a tax on it, although they cannot be compelled to pay any part of it, as persons who have paid a highway tax, but have no taxable property.

The Clerk of school district No. 4 in the town of
Colesville, ex parte.

School district libraries are designed both for those who have completed their common school education and those who have not.
The inhabitants of school districts may appoint a librarian, and adopt regulations for his government.
In the selection of books, sectarian and controversial subjects should be excluded.

This was an application to the Superintendent for information

with respect to the law authorizing the inhabitants of school districts to raise money to purchase common school libraries, with the request that he would furnish a catalogue of books suitable for the purpose, and a system of regulations for the government of the librarian.

By JOHN A. DIX, *October 25, 1835.* In reply to your inquiries, I do not see that I can at this moment say more than this, that the establishment of school district libraries was designed for the benefit of all the inhabitants of the district, youths as well as adults.

The act authorizing the establishment of school district libraries was passed in pursuance of a recommendation contained in my annual report, as Superintendent of Common Schools, for the year 1834. The annexed extract from that report will explain my own views on this subject, and furnish ground of inference with regard to the intention of the legislature. You will perceive that one of the contemplated objects was to furnish the means of improvement to those who have finished their common school education as well as to those who have not.

"If the inhabitants of school districts were authorized to lay a tax upon their property for the purpose of purchasing libraries for the use of the districts, such a power might, with proper restrictions, become a most efficient instrument in diffusing useful knowledge and in elevating the intellectual character of the people. By means of the improvements which have been made in the art of printing, a volume bound in boards, containing as much matter as the new testament, can be sold at a profit for ten cents. The sum of ten dollars would, therefore, furnish a school district with one hundred volumes, which might be kept under such regulations as the inhabitants should adopt for their common use. A vast amount of useful information might in this manner be collected, where it would be easily accessible, and its influence could hardly fail to be in the highest degree salutary, by furnishing the means of improvement to those who have finished their common school education, as well as to those who have not. The demand for books would ensure extensive editions of works containing matter judiciously selected, at prices which competition would soon reduce to the lowest rate at which they could be furnished. By making the imposition of the tax wholly discretionary with the inhabitants of each district, and leaving the selection of the works under their entire control, the danger of rendering such a provision subservient to the propagation of particular doctrines or opinions would be effectually guarded against by their watchfulness and intelligence."

The law authorizes the inhabitants to appoint some person to be "the librarian of the district," and to adopt such regula-

tions for his government as they may think proper. These regulations may, from local and other causes, be somewhat different in different districts; and I would not undertake at this time to recommend any system as applicable to all cases. The great object should be to secure the safe custody and preservation of the books, and to give the greatest possible facility to their circulation for perusal among the inhabitants of the district. The regulations may be few and simple.

I had intended ere this to procure a list of books for such persons as might think proper to ask my advice on this subject, but have not yet done so. In a few months purchases may probably be made to better advantage than at this moment, as there are now in a course of preparation at least two series of publications with a view to meet the objects of the law. As a general principle I would recommend, that in the selection of books all sectarian and controversial subjects should be excluded. It is for the inhabitants of the district to choose the works to be purchased, and it must depend much on their discretion in the execution of this trust, whether all the benefits in contemplation of the law will be secured. A liberal regard must be paid to opinions, even though they have their foundation in prejudice. With respect to certain subjects, no difference of opinion can well exist, so far as unexceptionable works on those subjects are proposed to be purchased. Among them may be enumerated History, ancient and modern, Biography, Geography, Natural Philosophy, Astronomy, Chemistry, Mineralogy, Botany, Moral and Political Philosophy, Political Economy, Agriculture, the Mechanic Arts, Statistics, &c. I do not intend this as a complete enumeration of subjects, but as comprising a class of the character above referred to.

The inhabitants of school district No. 9 in the town of Fabius, *ex parte*.

Commissioners of common schools have no authority to receive and decide upon appeals from school districts.

Inhabitants of school districts cannot by a vote to that effect, authorize their trustees to provide fuel in any other mode than that prescribed by law.

The following statement was presented to the Superintendent for his decision, pursuant to a vote taken at the annual meeting in 1835, in school district No. 9 in the town of Fabius.

"SCHOOL DISTRICT, No. 9, Fabius, }
"Annual meeting, Oct. 5, 1835. }

"To the Superintendent of Common Schools of the State of New-York.

"For a number of years past we have uniformly voted at our annual meetings, that the amount of wood used for the winter school be put into the school bill, and apportioned according to the number of days each proprietor sent, for the purpose of saving the trustees the trouble of calling upon each individual to furnish his quota of wood, as well as to save each individual the trouble of furnishing so small an amount of wood; and further, for the purpose of avoiding a new apportionment in the spring, as the number of scholars and days proposed vary essentially from the number of scholars and days actually sent.

"At our annual meeting in 1834, the following votes were passed:

"That there be twenty cords of good hard wood, eighteen inches long, furnished for the ensuing year, &c.

"That E. P. Howe have the contract for procuring the above mentioned wood at five shillings per cord, &c.

"That the bill for wood shall be included in the school bill.

"At the expiration of the school the trustees made out the bill for tuition, and also in a separate column levied the wood on the taxable property of the district, and carried out the tuition and wood in a 'sum total.' Some of the inhabitants paid their bills, and others refused to pay for the wood when assessed on taxable property; and as the tax list was not made out in thirty days after the vote was taken, the trustees called a special meeting 'for the purpose of choosing a collector in the place of Francis Batin removed, and transacting such other business as may come before said meeting.' Said special meeting was held on the 13th day of June last, at which time the following votes were passed by a majority of two:

"That E. P. Howe be chosen collector, &c.

"That the vote taken at the last annual meeting relative to procuring wood, be rescinded.

"That the sum of \$15.18 be raised by tax on the taxable inhabitants of said district, for the wood the winter past and repairs last spring.

"The trustees immediately made out the tax list for the wood, and gave the twenty days notice required by law when the valuations cannot be ascertained from the last assessment roll of the town; but previous to the expiration of the twenty days a number of the inhabitants of our district appealed from the decision of said special meeting to the commissioners of common schools of

our town, on the ground that the object of the meeting was not explicitly stated in the notice; that if it had been stated in the notice that other business would positively come before the meeting, and especially that a tax was proposed to be raised, some individuals would have attended who did not attend.

"The commissioners of common schools appointed a time for hearing the case, and accordingly met at the time appointed. After hearing the arguments for and against said appeal, the commissioners decided 'that in their opinion the proceedings of said special meeting were illegal,' since which time the trustees have continued to collect the bill for tuition, but the wood remains uncollected and unpaid, except a very small share.

"The objections urged against paying for the wood by a tax on taxable property, are the following :

"1st. A long standing custom by compromise and general consent to the contrary.

"2d. One of the taxable inhabitants of our district since the winter school closed has removed into an adjoining district, and is now liable to be taxed there for the property which he held here.

"3d. Two taxable inhabitants of our district have moved from another county into this district since our winter school closed, and paid a tax in that county for school wood the winter past, on the same property on which they would now be taxed here, the law making it the duty of the trustees to levy the tax on all the property owned or possessed in said district at the time of making out the tax list.

"The objections urged against apportioning the wood according to the number of days sent, are the following :

"1st. Some of the inhabitants who sent a number of children to the winter school, have since removed out of town, and one family out of the state, and the wood could not be equitably apportioned in this way, unless the present residents who sent to that school should be willing that the wood be paid for by them in proportion to the days sent, to which some would not now consent.

"2d. The teacher of the winter school lost his roll during the winter, and it has recently been ascertained that he made out a new one 'by guess' or supposition. This fact is now known to the district generally, and many who are in favor of having the wood apportioned according to the number of days sent, might not be willing to pay an account of the defect in the roll; at least some of the district would probably take exceptions on that account.

"It was generally expected that, after the decision of the commissioners, the trustees would either call another special meeting

or else make out a tax for the wood in proportion to the number of days sent, agreeably to the vote taken at the annual meeting last year, neither of which has been done.

"All parties agree that the individual who furnished the wood ought to have his pay, and are anxious to be at peace in the district, but as yet have failed to devise a plan to suit every individual in the district.

"The trustees contend, that the manner in which wood has usually been furnished for the district, is illegal; that the law provides only two ways to obtain the wood, and that the district, by agreeing in school meetings for a certain quantity of wood at a certain price, deprived the trustees of taking the second course pointed out in the law, and consequently they were compelled to make out the wood tax on the taxable property.

"On the other hand it is contended, that the uniform course heretofore pursued in our district was virtually the second course pointed out in the law; that by common consent it has been the opinion of the district generally, that the wood should be apportioned 'on the scholar,' and that the course usually pursued in our district has been resorted to solely for the purpose of saving trouble.

"At this, our annual meeting, we have agreed to the foregoing statement of facts, and voted unanimously that it be signed by the officers of the meeting, submitted to you for your decision thereon, and agree to abide the result.

"By order and in behalf of the meeting.

"JOSIAH ANDREWS, *Moderator.*

"SENECA SMITH, *Clerk.*

"For further information we will state (without particular direction from the district,) that at this, our annual meeting, we have agreed not to furnish wood the ensuing winter by a tax on the taxable property of the district, by a vote of 13 to 9, but that we will procure the wood in the manner formerly done in our district.

"You are requested not only to decide in what manner we shall raise the pay for the wood used last winter under existing circumstances, but also to say whether it is legal for us to furnish our wood as we have usually done, when at school meetings we surrender into the hands of the trustees our privilege and right of being called upon to furnish our quota of wood: the difference of opinion never having been about the particular manner in which wood shall be assessed on the scholar, but whether it shall be assessed on the scholar in any way, or by tax on the taxable property?

"You are requested, if possible, to attach your decision to this application and return the whole."

By JOHN A. DIX, *October 28, 1835.* I have examined the statement of facts presented by you in pursuance of a vote at the annual meeting for the year 1835, in school district No. 9 in the town of Fabius, with a view to a decision of the questions submitted to me. I cannot comply with your request to return the statement. It must be preserved in my office, in conformity with a rule adopted by my predecessor, and invariably adhered to by me, with respect to all communications to which answers are given.

The mode in which the trustees undertook to provide for the payment of the fuel consumed in your school district last winter, was altogether illegal, and it should not be attempted again. The amount due for that object might have been included in the rate bill, if, on being called on, the inhabitants had not provided it, but the proportion to be paid by each inhabitant of the district should have been determined by the number of days his children were sent to school, and not by the amount of his taxable property. This is the mode prescribed by law, and there can be no excuse for departing from it.

There is but one way in which the fuel provided last winter, can now be paid for, and that is by the collection of the tax voted on the 13th June last. I consider the proceedings of that meeting legal. The notice for a special meeting should specify all the objects of the meeting; but the omission to set them forth does not render the proceedings absolutely void, although it affords a ground of application to the Superintendent of Common Schools to set them aside, on showing surprise on the part of any of the inhabitants. If the omission was intentional, the propriety of his interposition will be still more apparent. But no such allegations are made in this case.

The appeal to the commissioners of common schools was altogether unauthorized by law. The Superintendent is the only tribunal to which an appeal from the proceedings of school district meetings will lie.

It appears that a tax levied on the taxable property of the district now, will subject two inhabitants, who have recently moved into it, to an imposition from which in equity they should be exempt. But this inconvenience cannot be obviated. The fuel cannot now be paid for by a rate bill; and if it could, equity would not be done, as some who ought to contribute to that object have removed out of the district, to say nothing of the manner in which the teacher's lists were made out. The trustees, as the representatives of the district, are answerable for the amount of the fuel; they may be sued; the amount recovered against them would, by the Revised Statutes, be allowed in their official accounts; and if they had no funds belonging to the district

out of which they could indemnify themselves for the amount paid by them, the legislature would doubtless direct it to be levied on the taxable property of the inhabitants. Thus the result would be the same.

The inhabitants may, if they please, make up the amount now due for fuel by voluntarily contributing what each one fairly owes. If they refuse, the tax must be levied on the taxable property of the district. The tax list was not made out within one month, but there is good cause for the omission in the appeal, which, though misdirected, must, as was supposed, be deemed to operate as a stay of proceedings.

If you provide fuel hereafter, as you have done heretofore, there may or may not be difficulty, according to circumstances. The established usage in the district, if it be a substantial, is not a rigid, compliance with the law. The vote of the inhabitants at the annual meeting, proposes to dispense with that provision of the statute which requires the trustees to call on each inhabitant for his quota of fuel. It is certainly not binding on the trustees, nor does such a vote authorize them to proceed in any other manner than that which is pointed out by the law. They may still make the call, and strictly it is their duty to do so. If they neglect it, and any inhabitant should refuse to pay his proportion of the amount due for fuel, I doubt whether the collection could be enforced against him. It certainly could not, unless his consent to the proceeding could be shown. In departing from the course prescribed by the statute, the successful execution of a trust becomes dependent on the acquiescence of others; and when a public agent undertakes to enforce an authority, he should be careful that he has himself taken all the steps enjoined on him by the statute, which confers the authority so to be enforced. The object in giving notices to each inhabitant of the quota of fuel to be provided by him, is to enable him to furnish it in kind, if he chooses, and (unless a tax is voted,) the right to collect the amount in money does not exist until that option has been presented to him in the mode indicated by the statute. You will perceive, therefore, that you will be liable to difficulty whenever an inhabitant thinks proper to create it, by refusing to pay for his fuel, and shelters himself under the irregular proceeding on the part of the trustees; for the vote of the inhabitants of a district cannot render legal a departure from the mode of procedure prescribed by law. So long as all acquiesce in a course which is certainly the most convenient, and may be altogether unobjectionable on the score of equity, no trouble is to be apprehended; but if any one chooses to contest the legality of the proceeding, the trustees will be involved in dif-

ficulty. The only course, therefore, which is safe, under all circumstances, is the one pointed out by the law.

The Trustees of school district No. 6 in the town of Yates, *ex parte*.

Non-residents are taxable for lands used as pastures.

The facts of this case are stated in the Superintendent's opinion.

By JOHN A. DIX, *October 29, 1835*. Mr. C. lives in the town of Ridgeway, and owns a farm there, pays taxes, &c, but owns a piece of land in the town of Yates, which he occupies for pasturing, ploughing, &c. separate and distinct from his farm. He has no house, servant or agent upon it, but whatever is done upon it he does himself. The question is; Has the school district in the town of Yates, in which said piece of land lies, a legal right to tax it for building a school-house?

Answer. There is no doubt about it. The owner may be taxed for so much of it as is cleared and cultivated; and the Superintendent has always held that a piece of cleared ground used for pasturing, was of that class of lands for which a non-resident owner may be taxed.

The Commissioners of Common Schools of the town of Alexander, *ex parte*.

When a school district is dissolved, the value of the school-house and other property ought to be distributed among the inhabitants according to their taxable property

In this case a school district was annulled and set off to other districts, all of which were furnished with school-houses. The question submitted was, in what manner the school-house and appendages belonging to the district so annulled should be disposed of?

By JOHN A. DIX, *October 29, 1835*. No provision has been made by law for the case about to occur in your school district. But, where a district is dissolved by the commissioners of common schools and the inhabitants are set off to other districts, the proceeds of the property belonging to the former ought to be distributed among the inhabitants according to their taxable property. It is the taxable property of the district that has provided the school-house, &c. and the proceeds of the sale should revert to the source from which it was derived. All the taxable inhabitants would of course participate in the distribution in ratio of their respective possessions. It may seem unjust, at first glance that those who have moved into the district since the school-house was built, should receive any portion of its value; but it

is possible that they may have paid an increased price for property in the district on account of the school privileges, and the rule will probably prove as equitable as any other that can be adopted. To all taxes levied for common school purposes in the districts, to which they are now set off, they will contribute in the ratio of their property, and for this reason also the rule of distribution seems reasonable. It is manifestly impracticable to seek out all who have contributed to the erection of the house, whether they remain in or have removed from the district, and restore to each his just quota of the value of the property.

(ANONYMOUS.)

If an annual meeting is regularly called and attended by only four persons who, without organizing, agree to meet again in a week, the second meeting is not valid.

If an annual meeting is regularly called and attended by four persons, who organize, and without transacting any other business adjourn for a week, the proceedings are valid and the annual election may be held at the adjourned meeting.

Schools must be kept in the district school-house, excepting in extraordinary cases.

By JOHN A. DIX. *October 30, 1835.* A statement of the cases submitted to me is herewith annexed with my opinion.

1. At an annual meeting legally notified by the district clerk, four persons only attended. The clerk was absent, and the meeting was not regularly organized, no moderator being appointed. The four who were present agreed to hold the annual meeting in one week from that time. The taxable inhabitants, or a major part of them, met at the time agreed on, organized the meeting and elected their district officers, with the exception of a collector. The question submitted is, whether the last meeting was legal?

Answer. It was not. Nor was the annual meeting legal. The latter was not organized, nor were there any proceedings whatever which were authorized or which could be made a matter of record. The agreement of a few individuals, assembled without any form of organization, to hold a meeting at a subsequent time, could not give validity to it as an adjourned meeting; and as the latter was held in pursuance of that agreement, the proceedings were altogether void and without effect.

2. At an annual meeting legally notified by the district clerk, four persons only attended. The clerk was absent. The meeting was organized by appointing a moderator and a clerk pro tempore. No further business was done, but the meeting was adjourned for one week from that time without having the proceedings of the meeting recorded. A major part of the inhabitants met in pursuance of the adjournment and elected their district officers,

with the exception of a collector. The question submitted is, whether this meeting was legal?

Answer. Yes. The annual meeting being regularly called and organized, the persons present had a right to adjourn to another day. The inhabitants of a school district may exercise this right whenever they are lawfully assembled at any district meeting. The adjournment being legal, the second meeting held in pursuance of it, was also legal, so far as respects the right to hold it. District officers must be elected at the annual meeting, but the second meeting must be deemed a continuation of the annual meeting, an adjournment having been voted in consequence of the small number of persons present, in order to procure a fair expression of the wishes of the district. The omission on the part of the proper officer to put the proceedings of the first meeting on record does not affect the validity of those proceedings. It is a delinquency for which the responsible persons are highly censurable; but their negligence cannot be allowed to prejudice the interests of the district.

3. Can a public school be supported in such a manner as to obtain the public money in any place, excepting the school-house in said district, when a majority of the district vote for it?

Answer. This must depend on circumstances. A school cannot be kept in any other place than the district school-house, excepting for the most urgent reasons. Cases may occur in which it is not only proper, but necessary, to select another house temporarily; but they are certainly rare, and when they do occur, the place where the school is to be kept must be designated by vote of the inhabitants.

(ANONYMOUS.)

If a school district is altered, the site of the school-house may be changed, by a majority of votes, and without the consent of the commissioners of common schools.

By JOHN A. DIX, *November 3, 1835.* If, after a school-house has been built or purchased, the district is altered, the site may be changed and the school-house removed by a majority of the voters present, and without the consent of the commissioners of common schools.

By reference to sub. 4, sec. 61, page 478, 1 R. S. you will observe that the power "to designate a site for the district school-house" is unlimited, excepting by the first part of the section, which is applicable to all its subdivisions: and by subdivision 6, of the same section, the power "to repeal, alter and modify" proceedings is given.

The provisions of the act of Feb. 17, 1831, are restrictions on the exercise of these powers: but these provisions are all applica-

ble to unaltered districts; and the 66th section of the revised statute relating to common schools having been repealed, there is no restriction as to fixing or changing the site of the district school-house, in districts which have been altered. In such cases the consent of the commissioners is not necessary, nor is a vote of two-thirds required. In other words, the powers given by sec. 61, before referred to, may be exercised.

A. B. a teacher in school district No. — in the town of New-Hartford, *ex parte*.

Trustees must settle all accounts arising out of contracts executed before the expiration of their term of office.

Trustees in office must sign a warrant, in order to give it validity.

In this case, a female teacher, employed in 1834, received part of her wages, and the balance remained unpaid, when the trustees, who contracted with her, went out of office. Her term of instruction ended before their term of office expired. There was no dispute as to the amount due her. The only questions were, who should make out the rate bills and sign the warrant.

By JOHN A. DIX, November 7, 1835. The Superintendent has always required trustees of school districts to attend to the settlement of all accounts arising out of contracts executed before the expiration of their term of office. Thus, if the term, for which the female teacher referred to in your letter was employed, expired before the trustees who contracted with her went out of office, they should have made out the rate bill for the collection of her wages, although the trustees in office at the time the rate bill was made out must have signed the warrant in order to give it validity. There has been gross negligence in postponing the collection of her dues to the present time: but I think the usual course proper in this case, notwithstanding the delay. The trustees in office when her term expired should make out a rate bill, including all the persons who sent children to school during that term and who have not paid their proportion of the amount due her for tuition. To this bill the trustees now in office must annex their warrant.

The Trustees of school district No. 1 in the town of Veteran, *ex parte*.

Persons removing from a district after a tax list is made out are liable for their portion of the tax.

In this case a tax list was made out, but before the tax could be collected, two of the persons included in the list removed from the district, and their places were supplied by two other persons who moved into the houses vacated by them. The

Superintendent was desired to state whether the persons so removing were liable for the amount due, and if so, how the collection was to be enforced against them.

By JOHN A. DIX, *November 13, 1835.* The persons, who have removed from your district since the tax list for building a school-house was made out, are liable for their portion of the tax. They were taxable inhabitants residing in the district at the time the tax list was made out, and if they refuse to pay, and the collector cannot find goods and chattels in their possession, the trustees may prosecute them for the amount due. The suits must be brought by the trustees in their name of office. See sec. 59 of the statute relating to common schools. There is no other mode of enforcing the collection of the tax against the persons referred to. The individuals, who have moved into the houses vacated by them, are not liable for the amount due from them. A warrant issued by the trustees of a school district is a lien only upon the goods and chattels belonging to or in possession of the persons included in the tax list, and does not bind those who succeed such persons in the occupation of their houses or farms.

The Inspectors of Common Schools of the town of Madison, *ex parte.*

Three inspectors must sign a certificate of qualification.

A separate examination of a teacher by three inspectors apart from each is not a compliance with the law.

This was an application for the opinion of the Superintendent in a case in which three inspectors had examined a teacher separate and apart from each other, and had given him a certificate of qualification. He was also desired to state whether two inspectors had authority to examine a teacher and grant a certificate.

By JOHN A. DIX, *November 16, 1835.* The signatures of three of the inspectors of common schools are indispensable to give validity to a certificate of qualification for a teacher. Before such a certificate can be given, three inspectors must examine him. For this purpose they must meet together. All these formalities have been held to be essential to the validity of a certificate. I do not recollect that a case similar to the one referred to in your letter has been presented to me; but it is quite clear that an examination of a teacher by three inspectors apart from each other, or at a meeting attended by two inspectors only, is not a sufficient compliance with the requirements of the law.

(ANONYMOUS.)

Errors in assessing taxes may be corrected after one month.

By JOHN A. DIX, *November 17, 1835.* Errors in the assessment of taxes for school district purposes may be corrected after the expiration of the month within which the tax lists are required to be made out.

The Commissioners of Common Schools of the town of Candor, *ex parte.*

An alteration in a school district, made without evidence of the consent of the trustees, or of notice to them, will be held not valid, if all concerned have for five years acted as though it had not been made.

In this case an alteration in a school district was made by the commissioners of common schools of the town of Candor and recorded, but without any evidence of the consent of the trustees or of any notice to them; and for five years no notice had been taken of the alteration by the trustees or any of the parties concerned. The question proposed was, whether it was to be regarded as a valid alteration.

By JOHN A. DIX, *November 19, 1835.* An alteration in a school district regularly made and recorded, but without any evidence of the consent of the trustees or of any notice to them, will not, after the lapse of five years, be deemed valid, if during that time all concerned have acted as though no alteration had been made. The fact that the proceeding has been wholly disregarded, is sufficient to raise a presumption that in consequence of the informality referred to no attempt was made to carry it into execution.

The Commissioners of Common Schools of the town of Orleans, *ex parte.*

Commissioners of common schools are entitled to such compensation for their services as may be voted by the inhabitants of the town. (But see note.)

Commissioners of common schools cannot charge a per centage on the school moneys received and paid over by them, and deduct such per centage from those moneys.

The following is a communication addressed by the Superintendent to the commissioners of common schools of the town of Orleans, on discovering by their annual report that they had deducted from the public moneys received and paid over by them a commission for their services.

By JOHN A. DIX, *November 21, 1835.* I perceive, by an examination of your annual report of the common schools for the present year, that you have charged a commission of \$2.42

on the moneys received by you for distribution to the districts in the town of Orleans in April last. Such a charge is altogether illegal and without precedent, excepting in the case of your predecessors in 1834. On referring to last year's report signed by Messrs. D. A. Aldrich, Charles Sexton and H. W. Bushnell, I find a charge of \$3, as a commission for receiving and distributing the school moneys. This fact escaped my notice last year; but in the examination of more than 800 reports it is, perhaps, not singular that it was overlooked.

I, of course, do not doubt that this commission was charged under the misapprehension on your part that you were entitled to it. I therefore trust that it will be promptly refunded as soon as you are apprized that it was illegally taken. The only mode of rectifying the error now is to add the amount charged in the two years 1834 and 1835, (\$5.42,) to the moneys to be apportioned and distributed in April next to the school districts in your town. I shall expect to find this item in the next annual report of the town of Orleans. You are entitled to such compensation for your services as the inhabitants of the town think proper to allow;* but you cannot pay yourselves out of the school moneys, and there is no authority to charge a commission for receiving and paying out those moneys.

The Trustees of school district No. 3 in the town of Le Ray, *ex parte*.

If a district is divided immediately after the school moneys are distributed, and the persons set off continue to send to school in the district, those moneys should be applied for their benefit in common with others.

This was an application to the Superintendent for his direction under circumstances explained in his order. In addition to the facts contained therein, it was also stated by the trustees of district No. 3 that the inhabitants of the new district, (No. 7,) who had continued to send their children to school in the former, refused to pay their tuition bills unless the public money was applied in reduction of their dues; and the question was submitted, whether the collector could distrain their property, (they being inhabitants of another district,) in case they were included in the rate bill?

By JOHN A. DIX, November 23, 1835. A statement has been presented to the Superintendent of Common Schools by the trustees of school district No. 3 in the town of Le Ray, setting forth the following facts, and requesting his decision thereon.

* By an act passed 22d April, 1837, commissioners of common schools are allowed one dollar per day for every day actually and necessarily devoted to their duties.

On the 14th of April, 1835, a new district was formed by the commissioners of common schools under the name of district No. 7, by setting off a part of districts No. 3 and No. 8. The property of district No. 3 was appraised and apportioned, and the amount due the new district was paid. No division was made of the public money, which had just been paid by the commissioners to district No. 3. The school-house in the new district is not yet completed, and the inhabitants of No. 7 formerly belonging to No. 3 have continued to send their children to school in the latter district. A rate bill to pay the wages of the teacher, who has been employed during the summer, has been made out, and the whole of the public money appropriated to the summer term has been applied for the benefit of the inhabitants of No. 3.

The Superintendent of Common Schools has repeatedly decided that the public money in the hands of the trustees of a school district, at the time such district is divided to form a new one, must be equitably shared by the respective parts thus separated from each other. It should have been treated as a common fund, in the case under consideration, and divided according to the number of children between 5 and 16 years of age. There is no law which makes such a proceeding a part of the duty of the commissioners of common schools in the division of a school district, and it is, therefore, not to be regarded as an error on their part. Public money is not to be considered as "property" within the meaning of section 67 of the statute relating to common schools. If it were so, the amount due the new district would, under section 69, be levied upon the taxable property of the district possessing it, which would be manifestly unjust. But it has always been treated by the Superintendent as a fund held in trust for the benefit of all the inhabitants of the district, until it is legally expended, and, therefore, proper to be equitably divided, (although there is no express legal provision to that effect,) whenever a part of the inhabitants are set off to form a new district.*

The principle, however, does not extend to cases where the money has been appropriated by a vote of the inhabitants to a term which has expired previous to the division of the district. The case under consideration is not of this character. The question concerns the disposition of public money applicable, at the time of the division, to the term next succeeding it.

The mode of providing the necessary relief in this case would be obvious, if there was not a disposition on the part of the trustees

* See the cases of the trustees of school district No. 4 in the town of Cobleskill, page 125, and the trustees of school district No. 8 in the same town, page 137.

tees of district No. 3 to do all that justice demands. The Superintendent would require the amount to which district No. 7 is fairly entitled to be deducted out of the next public moneys to be apportioned to No. 3, and paid to the trustees of the former district. But the whole question having been submitted to him by the trustees of No. 3 he will proceed to direct what justice seems to him to require.

It may not be improper to say, before giving the necessary direction, that the right of the collector to execute a warrant without the bounds of his district in this case is justly called in question by the inhabitants of No. 7.* If this position is correct, the only remedy will be for the trustees of No. 3 to prosecute the non-residents in their name of office, unless they pay voluntarily the amount due from them respectively. This course will be extremely troublesome, and may not, in every case, accomplish the ends of justice.

On the other hand, it is supposed that the inhabitants of No. 7, who have sent their children to school in No. 3 during the summer term, will pay the amount of their school bills without objection, if they are allowed to participate equally with the inhabitants of No. 3 in the benefits of the public money, and thus indirectly to enjoy what they were fairly entitled to receive. Should any refuse to pay, there will be no alternative left to the trustees of No. 3 but to prosecute them for the amount of their bills.

It is accordingly ordered, that the trustees of district No. 3 proceed immediately to make out a new rate bill for the collection of the wages of the teacher who taught the summer term. The public moneys will first be applied to the object, and the residue will be assessed equally upon all who have sent children to school, in proportion to the number of days so sent. If any of the inhabitants of No. 3 have made payments under the rate bill already made out, credit will be given to them for the amount of such payments on the new rate bill, and a direction will be given to the collector accordingly.

The Commissioners of Common Schools of the town of Sodus, *ex parte*.

Treasurers of counties cannot deduct from the school moneys the commission of one per cent to which they are entitled.

The treasurer of the county of Wayne had for several years, as appeared by testimony produced before the Superintendent,

* See the case of the trustees of school district No. — in the town of Willborough, decided March 6, 1837.

been in the habit of deducting from the school moneys paid over by him to the several towns in his county, the commission allowed him by law. The opinion of the Superintendent as to his right to do so was requested.

By JOHN A. DIX, *November 26, 1835.* Treasurers of counties have no right to deduct from the amount of the school moneys apportioned to each town by the Superintendent of Common Schools a commission of one per cent. They are unquestionably entitled to such a commission, under sec. 26, page 370, 1 R. S., on the moneys received and paid by them for the use of the common schools, but they have no right to diminish the amount of the moneys placed in their hands for distribution, under a special apportionment by the Superintendent. The commission referred to is a charge upon the county, and not upon the common school fund. See sub. 1, sec. 3, p. 385, 1 R. S. County treasurers are required to hold "the amount apportioned" to each town, subject to the order of the commissioners of common schools of such town. See sec. 14, page 469, 1 R. S. By the order of apportionment, the town of Sodus in Wayne county, is entitled to \$183.80 per annum. Has the town received that amount? Certainly not; and the requirements of the law have not been fulfilled.

In providing for raising on the towns a sum equal to that which they severally receive from the common school fund, the fees, which the collector is to receive as his compensation, are to be added to the sum first mentioned. See sec. 17, page 469, 1 R. S. This is clearly intended to guard against any diminution of the amount to go into the hands of the commissioners of common schools, and thus to make the sum levied on the town and paid to them precisely equal to the sum received by them from the county treasurer. If the county treasurer retains his commission out of the moneys received by him from the common school fund, the amount paid by the town will exceed the amount paid by the common school fund; whereas it was intended that they should be equal. Without a special provision, therefore, authorizing the county treasurer to retain his commission out of the moneys appropriated to and paid into his hands for the support of the common schools in the county, he cannot do so consistently with the requirements of the statute before cited. The commission charged by the treasurer on moneys received and paid by him, is his compensation for the services which he renders as a county officer. The amount of the commission is a charge upon the county treasury; and the board of supervisors should add it to the amount to be raised for defraying accounts chargeable against the county. The amount retained by the treasurer of Wayne county for several years past out of

the school moneys, ought to be refunded to the towns, and I have no doubt the board of supervisors would, on a representation of the facts, cause to be levied by tax an amount sufficient for the purpose.

The Trustees of school district No. 4 in the town of Darien, *ex parte*.

District officers duly elected cannot be displaced at an adjourned meeting on reconsideration of the choice before made.

In this case the annual meeting in school district No. 4 in the town of Darien was held at the appointed time and place, officers for the district were chosen for the ensuing year, and the meeting was then adjourned for five days. At the adjourned meeting the choice of officers was reconsidered and rescinded, and other persons were chosen in their place. The Superintendent was requested to state whether the proceedings at the adjourned meeting were legal.

By JOHN A. DIX, *November 27, 1835.* The district officers elected at your annual meeting on the 5th October are lawfully in office, if that meeting was legally organized and conducted, and they cannot be displaced by a reconsideration of their appointment at an adjourned meeting. The inhabitants had a right to adjourn to another day, if they could not complete their business. But a legal election once consummated cannot be brought up for reconsideration at a subsequent meeting of the inhabitants and set aside.

The Trustees of school district No. — in the town of Arkport, *ex parte*.

A tax cannot be voted for globes and school apparatus.

This was an application to the Superintendent for his opinion as to the propriety of raising a tax for purchasing globes and school apparatus under the provision of law which authorizes the inhabitants of school districts to furnish school-houses with necessary appendages.

By JOHN A. DIX, *November 27, 1835.* The inhabitants of school districts have no right to lay a tax upon their property for purchasing globes and apparatus for the use of their schools. These are not among the enumerated objects for which they are authorized by law to vote taxes; nor can globes and school apparatus be considered, however desirable they may be, as "necessary appendages" to a school-house. I regret that you should have any difficulty on this score, as the spirit which the inhabitants of your district have manifested in attempting to elevate

character of their school, reflects great credit upon them. They must, however, go a step further, as the statute affords no aid, and carry out by voluntary contribution what they have commenced.

The Trustees of school district No. 5 in the town of Catlin, *ex parte*.

On the 1st of September to the meeting of the board of supervisors the assessment roll of the town in the hands of the supervisor must be consulted in assessing taxes in school districts.

If a warrant is issued to collect a tax which has not been assessed according to the last assessment roll of the town, and property is taken and sold, the trustees who issued the warrant are answerable as trespassers: but the warrant is complete protection to the collector who executes it.

On the first Tuesday of October, 1835, a tax was voted in school district No. 5 in the town of Catlin to purchase a district library, and the tax list was made out by the trustees from the last assessment roll for the year 1834. The question submitted was, whether this could be deemed the last assessment roll of the town?

JOHN A. DIX, *December 1, 1835*. Tax lists must be made out according to the last assessment roll of the town. The Superintendent of Common Schools has decided that the assessment roll of the town, when signed and certified according to the provisions of the 26th section of title 2d, chap. 13, 1 R. S. page 394, is to be considered as "the last assessment roll of the town." This roll is, by the provisions of section 27, same page, to be delivered to the supervisor of the town, on or before the first day of September, to be delivered by him to the board of supervisors at their next meeting. From the first of September, therefore, to the day on which the supervisors meet, the roll can be consulted in the hands of the supervisor of the town, by the trustees of school districts. The board of supervisors meets in your county the Tuesday next after the general election, which is in November. The meeting at which the tax referred to in your letter was voted, was held on the first Tuesday of October. The assessment roll in the hands of the supervisor should have been consulted.

The supreme court in the case of Alexander and others vs. Hoyt, 7 Wend. 89, held that trustees of school districts were answerable as trespassers where property had been taken under a warrant issued for the collection of a tax, which was not assessed according to the last assessment roll of the town. It is extremely important, therefore, that they should, in the assessment of taxes, confine themselves strictly within the directions of the statute.

It is proper to add that the court held in the same case that the warrant was a complete protection to the collector in a suit brought against him for taking and selling the property, on the principle that a ministerial officer executing process issued by a tribunal having jurisdiction of the subject matter is not a trespasser though that tribunal err in the exercise of its duties.*

(ANONYMOUS.)

Contracts by trustees with a teacher for his wages are binding on their successors in office.

By JOHN A. DIX, *December 16, 1835.* Contracts between the trustees of a school district and a teacher for his wages are binding on the successors of such trustees. Thus a contract with a teacher to instruct the district school for six months is not vacated if the trustees who made it go out of office before the expiration of that period, and their successors are bound to see it fulfilled.†

There may be cases of gross misconduct on the part of a teacher which would justify the latter in dismissing him; but this depends on a different principle.

The Trustees of school district No. 9 in the town of Otselic, *ex parte.*

Taxes should be promptly collected.

If a tax is voted in express terms, and a direction subsequently given as to the time and manner of collecting it, the direction is void.

In this case a tax of \$120 was voted to build a school-house, in October, 1835. After the tax was voted a resolution was of-

* In the case of *Suydam and Wyckoff vs. Keys*, 13 Johns. 444, it was held by the supreme court, that the collector of a school district was liable as a trespasser in taking property under a warrant issued by the trustees for the collection of a tax, where certain non-residents not liable to taxation had been included in the tax list. The principle on which this decision was made was, that the authority of the trustees was special and limited, and that the subordinate officer was bound to see that he acted within the scope of the legal powers of those who commanded him.

This doctrine has been overturned by the decision of the court in the case of *Sacavool vs. Boughton*, 5 Wendell 170, in which it is settled that "if the subject matter of a suit is within the jurisdiction of a court, but there is a want of jurisdiction as to the person or place, the officer who executes process issued in such suit is no trespasser, unless the want of jurisdiction appears by such process."

Thus if the trustees of a school district should include in a tax list persons not liable to be included in it, and the collector should take and sell the property of such persons by virtue of the warrant directed to him for the collection of the tax, the warrant would be a protection to him, although the trustees would be answerable in trespass to the injured parties.

† This principle is settled by the supreme court, in the case of *Silver vs. Cummings and others*. 7 Wendell, page 181.

ferred and carried that the tax should not be collected until the ensuing 1st of April, and that lumber delivered before that time on the site of the school-house might be received in part payment of the tax. The legality of this direction to the trustees being doubted, the opinion of the Superintendent was asked.

By JOHN A. DIX, *December 31, 1835.* Taxes for school district purposes should always be promptly collected. They bind only goods and chattels in possession of the taxable inhabitants residing in the district at the time of making out the tax list, which must be completed within one month after the tax is voted. If the collection of the tax is delayed six months as proposed in your district, and any of your taxable inhabitants should move out of it, the property on which the taxes of such persons were estimated could not be reached, and the district might be without remedy against them or the persons coming into possession of that property. The Superintendent has, therefore, always required taxes to be collected immediately when questions of this sort have been brought before him. If a tax is voted unconditionally and in express terms, and the inhabitants proceed afterwards to give their direction to the trustees as to the time or manner of collecting it, the latter are not bound by such direction. The law points out the mode in which the tax shall be collected, and the trustees must be governed by its requirements. A vote to pay a tax in any thing but money is void and of no effect. If a condition as to the mode of collecting it is annexed to the vote or resolution by which it is authorized, so as to constitute a part of such vote or resolution, I incline to think the whole proceeding void.

(ANONYMOUS.)

Trustees should call a special meeting when requested by a respectable number of the inhabitants.

By JOHN A. DIX, *January 1, 1836.* Trustees should always call a special meeting of the inhabitants of a school district when requested by a respectable number of the inhabitants. The latter have a right to repeal, alter or modify their proceedings at district meetings; but how shall they exercise this power if the trustees refuse to call them together for the purpose? The Superintendent will always, on showing sufficient cause, order a meeting when the trustees refuse to do so. In case of an application to him for the purpose, the trustees must have notice of it.*

* See the case of Caleb N. Potter and others, page 147.

The Trustees of school district No. — in the town of Concord, *ex parte*.

If trustees neglect to raise and pay over the amount apportioned to a new district, their successors in office must make out a tax list and collect the amount so apportioned.

School district No. — in the town of Concord was divided and a new district formed. The school-house in said district was appraised by the commissioners, and the amount to be paid to the new district as its proportion of the value of the school-house was ascertained. The trustees neglected to collect the amount due to the new district during their continuance in office; and the question proposed to the Superintendent was, whether it was the duty of their successors in office to make out a tax list for the purpose, and pay over the amount so due?

By JOHN A. DIX, *January 6, 1836*. Where the trustees in office, at the time the school-house and property of a district are appraised by the commissioners of common schools in forming a new district, neglect to make out a tax list and collect the amount apportioned to such new district, their successors in office are bound to do it, precisely as though the apportionment had been made during the term of service of such successors.

A. B. a taxable inhabitant of school district No. — in the town of Vienna, *ex parte*.

The provision exempting from taxation for building a school-house persons who have within four years paid a tax for the purpose in another district, from which they have been set off without their consent, does not extend to taxes voted to furnish a school-house with necessary appendages.

In this case A. B. was set off without his consent from a school district, in which he had paid a tax for building a school-house within four years. A tax was immediately afterwards laid in the district, to which he was annexed, for purchasing a stove and some other necessary appendages to the school-house. The question presented to the Superintendent was, whether A. B. was exempt from a tax voted for such a purpose under the provision exempting persons set off under similar circumstances from contributing to the erection of a school-house?

By JOHN A. DIX, *January 7, 1836*. I am of opinion that the provision of sec. 81, page 483, 1 R. S. which exempts from the payment of any tax for building a school-house, every taxable inhabitant who shall have paid such a tax within four years, in a district from which he has been set off without his consent, does not extend to appendages to a school-house. I am disposed to construe the provision liberally; but I do not think the exemption can be extended so far as to include the objects of taxation

referred to, when the language of the statute in all cases relating to school-houses and their appendages is taken into consideration. In every such case appendages appear to be distinctly mentioned when they are intended to be referred to, and I am not aware of any instance, in which they can be deemed to be included in a provision in which the school-house only is named. This position is confirmed by the language of section 83, (the second section following the one before referred to,) in which a tenant may charge the owner of the land occupied by him with the amount of a tax paid by him, under certain circumstances, for building, repairing or purchasing a school house, or for furnishing it with necessary fuel and appendages.

It appears evident to me, therefore, that the law exempts you from nothing more than a tax for the school-house, and that you may be required to contribute for every other authorized object of taxation.

(ANONYMOUS.)

The Superintendent will not give opinions to be used in court

By JOHN A. DIX, *January 8, 1836.* The Superintendent is requested to answer certain questions in such a manner that his opinion may be used in court. He cannot comply with this request. If the questions in dispute had been brought before him for adjudication, he would dispose of them at once; but as they have been carried into the courts, he has no control over them, nor would it be decorous on his part to give an opinion in a special case for the purpose of influencing the judicial decision about to be pronounced upon it.

The Trustees of school district No. 17 in the town of
Le Ray, ex parte.

If a taxable inhabitant sells his farm and remains in the district, he is liable to be taxed on the amount of the purchase money paid or secured to be paid as personal property, and the purchaser is taxable for the farm according to its assessed value on the last assessment roll of the town.

On the 30th of November 1835, Mr. Walker moved into school district No. 17 in the town of Le Ray, and purchased of Mr. Lawrence, for the sum of \$3,600, a farm which on the last assessment roll of the town was valued at \$750. Mr. Walker paid \$1,500, at the time of the purchase, and gave securities for the balance, \$2,100. Mr. Lawrence continued to reside in the district. On the 19th of December, 1836, a tax was voted to build a school-house. In making out the tax-list, the trustees of the district assessed Walker for \$750, the value of the farm as ascertained by the last assessment roll of the town, and Law-

rence for \$3,600 the amount of the purchase money paid and secured to be paid to him for the farm. The Superintendent was requested to state whether the assessment was properly made.

By JOHN A. DIX, *January 11, 1836.* The assessment of the property of Messrs. Lawrence and Walker is according to the requirements of the law, and I see no reason, either in law or equity, for reducing the amount as to either. The only injustice in the case is that Mr. Walker should be taxed to the amount of \$750 only, for property which he has just purchased for \$3,600. But this cannot be avoided, the value being fixed by the last assessment roll of the town.

So much of the purchase money as has been paid, and the amount of the securities in Mr. Lawrence's possession for the payment of the balance, are personal property, and are liable to be taxed as such. The district has gained by the sale of his farm the amount of the purchase money in taxable property: but if Mr. Lawrence had removed from the district after selling out, there would have been nothing gained, and, indeed there would have been a loss, if Mr. Walker's personal property, after deducting his debts, (and the balance of \$2,100 due for the farm is to be considered as a debt,) were less than Mr. Lawrence's personal property deducting his debts. The only way in which the district could be a gainer, would be by Mr. Lawrence's remaining in it, as he has done.

(ANONYMOUS.)

A warrant runs from its delivery and not from its date.

A collector cannot sell property after the expiration of his warrant.

By JOHN A. DIX, *January 11, 1836.* The time for executing a warrant runs from the time of its delivery to the collector, and not from its date. See sec. 84, page 484, 1 R. S.

If a collector makes a levy before the expiration of the time limited for the return of the warrant, he cannot sell after the expiration of that time, unless the warrant is renewed. Thus if he takes property on the twenty-eighth day after the delivery of the warrant to him, and immediately gives six days' notice of sale, he cannot sell at the end of the six days, unless he procures a renewal of the warrant, as he is commanded to make his return within thirty days.

The Trustees of school district No. — in the town of Stillwater, *ex parte.*

A tax to purchase a school district library cannot be voted at a meeting of which no notice is required by law to be given.

At the annual meeting in school district No. — in the town

of Stillwater, the propriety of raising a sum of money by tax for the purpose of purchasing a library for the district was informally considered, and after some discussion the meeting was adjourned for two weeks. In the mean time, the clerk of the district put up notices, stating that a meeting would be held at the appointed time and place for the purpose of voting a tax to purchase a district library. The meeting was held, and a tax of \$20 was voted for the purpose. The question presented to the Superintendent was, whether a tax could be legally voted at such a meeting?

By JOHN A. DIX, *January 13, 1836.* The proceedings of the meeting at which a tax was voted to purchase a school district library were illegal, so far as that vote is concerned, for want of a proper notice.

The provision in the act relative to the purchase of school district libraries requiring a notice of intention to lay a tax to be given, was not in the bill as originally reported, but was inserted by way of amendment, and the effect of it appears to me to be, that no tax for that purpose can be laid excepting at a meeting, of which a notice is required by law to be given. Thus, such a tax cannot be voted at an adjourned meeting, unless the adjournment is for more than one month, because no notice is required to be given for a meeting adjourned for a shorter time. The notice given in this case not being in pursuance of any legal requirement, cannot be considered as having any valid effect. Such a tax may be voted at an annual meeting, if the intention to propose it be inserted in the notice, or it may be voted at an adjourned meeting for more than one month, provided such notice of intention is given. It may of course be done at a special meeting, the notice in this case being by personal service. The meeting at which the tax was voted in your district, is precisely the meeting, at which such a tax cannot be voted at all.

The Inspectors of Common Schools of the town of Coxsackie, *ex parte.*

Commissioners and inspectors of common schools are entitled to such compensation as may be voted by the electors of the town at their annual town meeting. (But see note.)

This was an application to the Superintendent for his opinion as to the authority of the board of supervisors of a county to make an allowance to commissioners and inspectors of common schools for their services.

By JOHN A. DIX, *January 15, 1836.* The electors of each town have power at their annual meeting, to establish the com-

pensation of commissioners and inspectors of common schools. See laws of 1830, chap. 320, sec. 1. Has your town passed a vote on this subject? If so, the amount fixed by it, must govern the board of supervisors in auditing your account. If no such vote has been passed, it should be done at the next annual meeting of the town; for I doubt whether the supervisors can allow any thing as a compensation to commissioners and inspectors of common schools, unless the rate is established as provided by law.

With respect to the collector of the town, it is different. He cannot have more than five, nor less than three per cent. But in reference to the officers before mentioned, the law has fixed no minimum rate of compensation. It is, therefore, left wholly to the discretion of the electors of the towns; and if they vote nothing, I do not see how those officers can be allowed any thing.*

(ANONYMOUS.)

Trustees cannot transfer to teachers the authority of prosecuting individuals for tuition bills. But trustees must collect their dues by a rate bill, notwithstanding an agreement on the part of the teacher to collect them himself.

By JOHN A. DIX, *January 20, 1836.* Trustees of school districts cannot transfer to teachers the right of prosecuting individuals for their tuition bills. The trustees are responsible for the payment of their wages, and the teachers should look to them alone. If the teacher agrees to collect his own dues, it is right that he should do so to the extent of his ability; but I have always held that, in case of a refusal on the part of the individuals indebted to him to pay their dues, the trustees should issue a rate bill, and direct the amount so due to be collected, notwithstanding any agreement with the teacher to the contrary. The justice of such a decision is manifest. The teacher contracts with the trustees to teach the district school, and he is entitled to the aid of the authority which the law has deposited with them, for the purpose of enforcing the payment of his dues from the inhabitants of the district. They will not be allowed to make a contract with a view to transfer this responsibility to the teacher, and deprive the latter of the legal remedies which the law has provided for him. If those who are indebted to the teacher do not pay him voluntarily, the sums due him must be collected in the mode prescribed by law.

* By the 5th section of the act of 22d April, 1837, commissioners of common schools are allowed "one dollar per day for every day actually and necessarily devoted by them in their official capacity to the service of the town for which they may be chosen, the same to be paid in like manner as other town officers are paid."

The Trustees of school district No. 3 in the town of Walkill, *ex parte*.

Annual meetings need not be precisely one year apart to a day.

This was an application to the Superintendent for his opinion as to the power of the inhabitants of school districts, to fix the time for their next annual meeting on a day more or less than a year from the day on which the last was held.

By JOHN A. DIX, *January 23, 1836*. I have received your letter inquiring whether an annual meeting can be fixed at a shorter period than one year from the time at which the previous annual meeting was held? I do not think it indispensable that annual meetings should be exactly a year apart to a day. The time may be a few days or weeks more or less than a year if the inhabitants think it necessary. For instance, an annual meeting held on the first Tuesday of October may be adjourned to the second Tuesday of October of the next year. The propriety of the act in every case must depend upon the circumstances attending it. No general rule, as to the extent of the variation from a year, can be laid down as applicable to all cases.

The Trustees of school district No. 9 in the town of Paris, *ex parte*.

The inhabitants of school districts cannot vote a tax to provide fuel for singing schools.

In school district No. 9 in the town of Paris, a singing school was held in the school-house two evenings in the week, and it had been customary in warming the house on those evenings to use the fuel provided for the school. The propriety of using the fuel for this purpose was discussed at a meeting of the inhabitants, and a tax was voted by a large majority to furnish as much wood as was required for the purposes of the district school and the singing school. To this proceeding objections were made by a few of the inhabitants, and the opinion of the Superintendent was solicited as to its legality.

By JOHN A. DIX, *January 30, 1836*. There is no authority to use fuel provided by tax on the inhabitants of school districts, for any other purpose than that of the district school. If every inhabitant in a district were to vote in favor of raising a tax to buy wood for singing schools, it would be illegal. The law has specified the objects for which the inhabitants of school districts may vote taxes on their property, and they cannot exceed the limits of the authority thus conferred on them.

The Trustees of school district No. ——— in the town of Fallsburgh, *ex parte*.

A tax cannot be laid to erect a building to be occupied jointly as a school-house and a meeting-house.

In this case a tax of \$400 was voted to aid in the construction of a house to be occupied during week days for the purposes of the district school, and for holding religious meetings on Sunday. The balance of the sum required to construct it was to be raised by subscription. Doubts having arisen as to the legality of this proceeding, the opinion of the Superintendent was requested.

By JOHN A. DIX, *March 9, 1836.* The resolution of the inhabitants of your school district to unite with certain persons to build a house for the joint purpose of keeping a school and holding religious meetings, and to lay a tax on the district for the purpose, is illegal, and cannot be carried into execution. The Superintendent of Common Schools has long since decided that there can be no partnership in school-houses, which will prevent their being controlled entirely for common school purposes.

The Commissioners of Common Schools of the town of Greene, *ex parte*.

School district libraries are intended for the use of all the inhabitants of the district.

The right of taking books from the library cannot be restricted to scholars attending the district school.

The inhabitants may direct the librarian not to deliver a book to a person who has not returned one previously taken out by him, or until he has paid for any injury it may have sustained.

The following questions were proposed for the decision of the Superintendent by the commissioners of common schools of the town of Greene:

1. Are school district libraries intended for the common schools primarily, or for the inhabitants of the districts?

2. Can the inhabitants of a district, at a legal meeting, restrict the use of the books to the scholars attending the district school?

3. If a book be lost, or destroyed, or so damaged as to render it unfit for use, can the value of the book be collected from the person in whose possession it was when it was lost, destroyed, or damaged?

By JOHN A. DIX, *March 9, 1836.* School district libraries are intended for the inhabitants of school districts; as well for those who have completed their common school education, as

for those who have not. The primary object of their institution was to disseminate works suited to the intellectual improvement of the great body of the people, rather than to throw into school districts for the use of young persons works of a merely juvenile character.

The books being procured by a tax on the property of the district, no unnecessary restriction should be imposed on their circulation among the inhabitants. The regulations to be made by the inhabitants should relate principally to their custody and preservation.

I doubt, therefore, the right of the inhabitants to restrict the choice of books, to be taken from the library for perusal, to scholars attending the district school. They may have the privilege of drawing them, if the inhabitants adopt such a rule; but I think any such rule must be subject to the right of any inhabitant to take from the library for perusal any book in it—the time and manner of taking and returning it to be regulated by the voice of the district.

If a book be destroyed or damaged, there is no power in the district to make the person so destroying or damaging it pay for it. It would, however, be competent for the inhabitants to direct the librarian not to deliver a book to a person who had not returned one previously taken out by him, or until he had made reparation for any injury it may have sustained while in his hands.

The Trustees of school district No. — in the town of Homer, *ex parte*.

Taxable inhabitants only can be included in tax lists.

If a person moves into a district after a tax list is made out, he cannot be included in it.

If a person removes from a district after a tax list is made out, he may be prosecuted for his part of the tax if he does not pay voluntarily.

In school district No. — in the town of Homer, a tax of \$100 was voted to build a school-house, and at a subsequent meeting of the inhabitants an additional tax of \$120 was voted for the same purpose. After the tax of \$100 was assessed, and before the tax of \$120 was voted, A. B. sold his farm to C. D., and moved out of the district. C. D. moved into the district after the tax of \$100 was assessed and before the tax of \$120 was voted. The question proposed was, whether A. B. and C. D. were liable to pay their proportion of either or both taxes?

By JOHN A. DIX, *March 14, 1836*. No person can be included in a tax list unless he is a taxable inhabitant residing in the district at the time the tax list is made out. Thus, if two taxes are voted at different times, one of \$100 and another of

\$120, and after the first is assessed an inhabitant removes from the district, and before the second is assessed his place is supplied by another inhabitant, the person moving out of the district cannot be made to pay any portion of the second tax of \$120, nor can the person taking his place be made to pay any portion of the first tax of \$100. But the person first referred to, although he has removed from the district, can be prosecuted (unless he pays voluntarily) for that portion of the tax of \$100 assessed on him while he was an actual inhabitant of the district.

The Commissioners of Common Schools of the town of Westfield, *ex parte*.

If there are but two commissioners of common schools in office, they may act as such until a third is appointed.

In the town of Westfield one of the persons elected as commissioners of common schools declined serving. The vacancy was not supplied by the proper authority, and the two other commissioners transacted the ordinary business of the town in relation to the common schools during the year. Among other acts performed by them, was the organization of a new school district. The right of two commissioners to act until a third was appointed having been called in question, the opinion of the Superintendent was solicited.

By JOHN A. DIX, March 14, 1836. When one of the commissioners of common schools refuses to serve, the two others may act until a third is appointed. The vacancy should have been filled in the mode prescribed by law; but you are not responsible for the omission, and your powers, with respect to all matters within your jurisdiction, are as ample as they would be if the board was full in point of numbers. Any attempt to vacate your proceedings on that ground will be fruitless.

The Trustees of school district No. — in the town of Petersburg, *ex parte*.

A person hiring out his services for a limited period to an inhabitant of a school district, must, if of age, be deemed a resident of the district, unless he has a family and domicile elsewhere.

The last assessment roll of the town is not a guide, in making out a tax list, as to a person who became an inhabitant of the district after the roll was made out.

In this case an individual came into school district No. — in the town of Petersburg, and hired out his services for a limited period to an inhabitant of the district. The individual so hiring out his services had no family or domicile elsewhere, but had personal property worth more than fifty dollars over and above

such as is exempt by law from execution. He moved into the district after the last assessment roll of the town was completed, and was not, of course, included in it. The question presented to the Superintendent was, whether he could be included in the assessment of a tax voted to build a school-house?

By JOHN A. DIX, *March 22, 1836.* A person hiring out his services for a limited period to an inhabitant of a school district, must be considered as a resident of the district, if he is of age, unless he has a family and domicile elsewhere. It is not necessary that his name should be on the last assessment roll of the town, in order to make him liable to be taxed. The trustees must see that every taxable inhabitant residing in the district is included in the tax list. The last assessment roll of the town is to be consulted only so far as valuations of property are concerned: and it is not a guide, from the necessity of the case, where a person has become an inhabitant of the town and the district subsequently to the time of its completion. In every such case the trustees must make a valuation of the property of the persons coming into the district, giving notice in the manner required of town assessors in making valuations of taxable property.

The Trustees of school district No. 1 in the town of Nanticoke, against the Commissioners of Common Schools of said town.

If a man is employed in a school district in taking care of a mill from fall till spring, his children must be enumerated in the district.

The facts of this case are stated in the Superintendent's opinion. The question submitted was, whether the children of the person referred to in the statement presented to the Superintendent could be enumerated in district No. 1 in the town of Nanticoke.

By JOHN A. DIX, *March 25, 1836.* The Superintendent of Common Schools has received a statement submitted by the trustees of school district No. 1 in the town of Nanticoke, and the commissioners of common schools of said town, in the following words:

"In the aforesaid district is the following property, viz: A saw-mill and a dwelling-house owned by a non-resident of the town, the mill doing business say four months in a year. The owner employs a man in the fall to attend to the concerns about the mill, who occupies the house till spring, and then removes.—Are the children of parents coming into the district under such circumstances, residents under the school law?"

The children of the person living on the premises from fall

until spring must be enumerated in the district. Although his residence is not permanent, he is an actual resident of the district on the 31st of December, and if his children are not enumerated there, it is manifest that they cannot be in any other district in the state.

The Commissioners of Common Schools of the town of Corinth, *ex parte*.

If a teacher is taken sick, and another cannot be procured in time to have the school kept three months, the Superintendent will, on showing the facts, allow the district a share of the public money.

In this case a qualified teacher was employed in the fall of 1835, in school district No. 7 in the town of Corinth, but after teaching several weeks he was taken sick, and was compelled to give up the school. The trustees immediately endeavoured to procure another teacher, but they did not succeed in time to have the school taught three months by a qualified teacher before the 1st of January, 1836. The trustees made a full statement of the facts in their annual report to the commissioners of common schools, who set apart and retained in their hands the amount of money to which the district would have been entitled if a school had been kept in it three months during the preceding year by a qualified teacher, and referred the case to the Superintendent for his decision.

By JOHN A. DIX, April 11, 1836. I have received your statement in relation to school district No. 7 in the town of Corinth. The case is one which demands the interposition of the Superintendent of common schools in order to save the equitable rights of the district. The deficiency in respect to the time during which a school was kept by a qualified teacher, was occasioned by a cause over which the trustees of the district had no control. Their intention to comply with the requirements of the law was frustrated by necessity: no diligence or exertion on their part was wanting, and the district must not suffer. You were right in referring the matter to the Superintendent; and you are accordingly authorized to pay the trustees the public money retained in your hands.

The Commissioners of Common Schools of the town of York, *ex parte*.

Separate neighborhoods can only be set off to form districts with the inhabitants of adjoining states.

In consequence of a difficulty in one of the schools districts in the town of York, the commissioners of common schools of the

town set off a part of the inhabitants as a separate neighborhood. No part of the town or the county of which it was a part was adjacent to the territory of another state. The question presented by the commissioners to the Superintendent was, whether in this proceeding they had acted without legal authority?

By JOHN A. DIX, April 12, 1836. Separate neighborhoods can only be set off for the purpose of forming districts with inhabitants of an adjoining state. The proceeding of the commissioners in the case referred to, was, of course, illegal. They have a right to form a new district, and in such case, the school-house may be appraised, so that the persons set off to the new district may have their proportion of its value.

The Trustees of school district No. 8 in the town of Nichols, *ex parte*.

If a new district, formed with the consent of the trustees of the districts from which it was taken, has gone on in good faith to build a school-house, and a school has been kept ten months, irregularities in its formation will not be noticed, after the lapse of two years, if the record of the proceedings of the commissioners in forming it is regular, and no appeal has been made.

Commissioners of common schools will not be permitted to deny the legal existence of a district when their own records show it to have been regularly formed.

In April, 1834, the commissioners of common schools of the town of Nichols formed a new school district by the designation of district No. 8. The trustees of the districts from which it was taken having consented to the alterations in their respective districts, it was immediately organized and a school-house built. The district was reported to the Superintendent of Common Schools as a regularly organized district in 1835; but on apportioning the public moneys in April, 1836, among the school districts in the town, No. 8 was refused a share by the commissioners on the ground that it had not been regularly organized, and therefore had not a legal existence. The opinion of the Superintendent was desired as to the propriety of their course in thus excluding the district from the apportionment.

By JOHN A. DIX, October 15, 1836. I have received your statement in relation to school district No. 8 in the town of Nichols.

This district was formed, as is admitted, in April, 1834; but it is alleged that the commissioners did not in all respects pursue the course required by law. The proceedings of the commissioners, as entered of record in the office of the town clerk, appear to be regular, and it seems that the consent of the trustees of the several districts out of which No. 8 was formed, was duly obtained and recorded. In the month of July ensuing, a com-

munication was addressed to the Superintendent of Common Schools, complaining of the alteration in one of the districts by the formation of No. 8. To this application an answer was immediately returned, stating that it could not be received as an appeal, because the course prescribed by the Superintendent in such cases had not been pursued, and that the matter of complaint would be promptly investigated when it should be presented in proper form. The application has never been renewed; the new district has been organized two years, a school-house has been built, and during the last year a school has been kept in it nearly ten months. Under these circumstances, the new district has acquired equitable rights which ought not to be disregarded in an examination of this subject. Although in forming the district all the formalities prescribed by law may not have been complied with, no irregularity is shown by the record, and its accuracy should have been impeached at the time it was made, if it was intended to disturb the proceedings. You state that some legal proceedings which were instituted in this case were settled by a decision adverse to the trustees of the district; but it does not appear that the principles of the decision touched the question of the organization of the district. The commissioners of common schools have no authority to pass judgment upon the legality of its organization, as they have done in direct opposition to the evidence furnished by their own record, and their reports to the Superintendent of Common Schools. They might have annulled the district; but so long as their own records show it to have been regularly formed, they should not be allowed to dispute the fact. It is only by a direct adjudication by a court of law, upon the legality of their proceedings in forming the district, a decision of the Superintendent, or an order properly made by themselves rescinding their former proceedings and annulling the district, that its organization can be disturbed. The commissioners may, when distributing the public moneys, exclude a district on the ground that it has not a legal existence; but they cannot do so when their own records and reports show the contrary. In such a case, the remedy must be provided in one of the modes before suggested.

The Commissioners of Common Schools of the town of Spencer, *ex parte*.

If the annual report of a school district is received by the commissioners before the public moneys are distributed, it is in time, and the district should be included in the apportionment.

The commissioners of common schools of the town of Spencer met on the first Tuesday of April, 1836, to make an appor-

tionment of the public moneys to the school districts in the town; but the annual report of school district No. 3, which had been handed to the town clerk, having been mislaid, the final apportionment was postponed until the second Tuesday of April. Between the first and second Tuesday of April, the annual report of school district No. 2, which had not before been delivered to the town clerk, was handed in to the commissioners; and the question presented by them was, whether district No. 3, the annual report of which had not been delivered before the first Tuesday of April, should be included in the apportionment?

By JOHN A. DIX, *May 7, 1836.* If a report from a school district is handed in at any time before the commissioners have apportioned the public money, it is in time, and should be included in the apportionment. The law requires the reports to be made on or before the first of March, and yet they are to be received at any time before the apportionment. The apportionment is required to be made on the first Tuesday of April, whether all the reports are received or not; but if this duty is neglected, it must, from the necessity of the case, be discharged on a subsequent day. I consider the apportionment in your town as having been made on the second Tuesday of April; and for the same reason that the report of No. 3 was acted on and a re-apportionment made after the proper time, the report of No. 2 should have been received, and the proper allowance made to that district. If the apportionment which was to have been made on the first Tuesday of April, had not been delayed by reason of a mistake on the part of the town clerk, No. 2 could not have come in and claimed an allowance; but the distribution having been postponed, its equitable rights ought to have been saved.

The Trustees of school district No. 1 in the town of Lawrence, *against* the Commissioners of Common Schools of said town.

Errors committed by the commissioners of common schools in apportioning the school moneys, cannot be corrected by their successors in office, without an order from the Superintendent.

The facts of this case are set forth in the Superintendent's order.

By JOHN A. DIX, *May 12, 1836.* This is a case submitted by the commissioners of common schools of the town of Lawrence, and the trustees of school district No. 1 of said town, with respect to an error in the report of that district for the year 1834. The principal facts are as follows: The trustees of said district in their annual report for that year omitted two of the inhabitants in stating the "names of parents," and their six children were consequently not included in the column of children be-

tween 5 and 16 years of age. The mistake occurred in copying the original draught of the report, as the footing of the column referred to contained six more than the addition of the figures in the column amounted to. Soon after the apportionment of the school moneys in April following, the error was discovered, and the trustees have regularly applied to the commissioners of common schools during each subsequent year to the present time to allow them the amount, to which they were equitably entitled, and which they would have received but for the mistake referred to. The commissioners have declined making the allowance, from the belief that they had no authority to do so. The whole matter is now submitted to the Superintendent for his direction.

The commissioners of common schools decided correctly in declining to act for want of authority. They are authorized to correct errors in the reports, on which the apportionment is to be made by them; but they have no authority to correct errors in the reports of preceding years, and thus modify the apportionments made by their predecessors in office. All such cases must be brought before the Superintendent for an equitable adjudication. After the lapse of time which has occurred in this case, he would not interfere, if the trustees of No. 1 had not regularly presented their claim to the commissioners of common schools every year since the error occurred, with the supposition that the latter were authorized to correct it. As there has been no want of diligence on their part, and as the equity of the case is undeniable, it is Ordered, that the commissioners of common schools of the town of Lawrence pay to the trustees of school district No. 1 in said town, out of the next moneys which shall come into their hands for distribution, such sum as that district would have received in the year 1834, if the six children accidentally omitted had been included in the annual report of the district for that year.

The Trustees of school district No. 9 in the town of Barre, against the Commissioners of Common Schools of said town.

If public money is paid to a teacher not qualified, and the trustees or inhabitants replace, out of their private funds, the amount so paid, the district will be allowed to participate in the apportionment of the public moneys.

The facts of this case are stated in the Superintendent's order. By JOHN A. DIX, *May 14, 1836.* The Superintendent of Common Schools has examined the statement of the trustees of school district No. 9 in the town of Barre, in relation to the payment of a portion of the school moneys received by that district

in 1835; to a teacher not qualified according to law. In the truth of the statement, so far as they know them, the commissioners of common schools of the town concur.

By this statement it appears that the sum of \$12.50, received from the commissioners of common schools in April, 1835, and being a part of the school moneys apportioned to the district aforesaid, was paid to a teacher, who did not, during any part of her term of instruction, hold a certificate of qualification from the inspectors of the town dated within one year. She had, however, taught 8 seasons. During the year 1834, she taught the school in an adjoining district, and she had at different times received certificates of qualification. Under these circumstances, the trustees, who employed her, neglected to have her examined by the inspectors; and their successors in office, not being aware that this duty had been neglected, paid her the sum of \$12.50 out of the public moneys on account of her wages, supposing her to be qualified. Soon afterwards it was discovered that she had not a certificate dated within a year. In their annual report for the year 1835, the trustees stated, that of the sum of \$37.50, received from the commissioners of common schools, \$25 had been paid to a teacher duly qualified, and \$12.50 to a teacher not qualified; and the commissioners of course refused to apportion to the district a share of the public money for the year 1836.

The payment of any portion of the public money to a teacher who is not qualified as the law directs, is a violation of the statute. It is, indeed, not a payment in law; and the trustees, by whom it is made, may be prosecuted for the amount as for a balance remaining in their hands. But would the recovery of the amount so paid save the equitable rights of the district? Clearly not. If it was not a payment in law, an equal sum ought of right to be raised by a rate bill against those who sent their children to school during the term for which it was paid: and this would not, without the equitable interposition of the Superintendent, prevent a forfeiture of the right of the district to participate in the distribution of the public money for the present year.

The equities of this case are clear. The teacher, though not legally qualified, was so in point of fact. The trustees who paid the money were not aware of the delinquency of their predecessors in office, until a short time before they made their annual report; and they have, by stating the whole truth in that report, given the strongest evidence of having acted in good faith.

Under all the circumstances, the Superintendent deems it equitable to allow the district its share of the public money, if the sum of \$12.50 shall be raised and replaced out of their private funds by the trustees or inhabitants. In this case, that amount

must be held by the trustees as public money, and expended during the present year in payment of the wages of qualified teachers precisely as though it had been received from the commissioners of common schools; and it must be accounted for in the next annual report of the district.

It is accordingly ordered, that the commissioners of common schools of the town of Barre, on receiving satisfactory evidence that the foregoing requirements have been complied with, apportion to said district No. 9, out of any school moneys in their hands, or to be in their hands, such sum as that district would have been entitled to receive for the present year, if the amount apportioned to that district in 1835 had been applied to the payment of the wages of a qualified teacher.

The Commissioners of Common Schools of the town of Harrisburgh, *ex parte*.

Permanent town funds must be applied exclusively for the benefit of the common schools in the town.

In this case the opinion of the Superintendent was requested by the commissioners of common schools of the town of Harrisburgh, as to the proper application in joint school districts of moneys derived from permanent town funds. The town of Harrisburgh had a local fund, which was once a poor fund, but which, when the town poor became a county charge, was appropriated to the use of common schools in the town. The adjoining towns had no such funds; and the question proposed was, whether the inhabitants of those towns belonging to joint districts lying partly in the town of Harrisburgh could be benefited by the town fund of the latter.

By JOHN A. DIX, *May* 31, 1836. It has been settled, in several cases, by the Superintendent of Common Schools, that the proceeds of school lands must be applied exclusively for the benefit of the inhabitants of the town to which the lands belong. Thus, if a joint school district receives from one of the towns of which it constitutes a part, a portion of the proceeds of the school fund belonging to the town, the inhabitants of the other town or towns cannot be benefited by the amount so received. For the purpose of applying it exclusively to the use of the inhabitants of that part of the district lying in the town to which the fund belongs, two rate bills must be made out when the public money is insufficient to pay the wages of the teacher. One rate bill must be against the inhabitants of the district residing in the town to which the fund belongs, and the other against the inhabitants of the district residing in the other town or towns; and the former must be credited with the amount derived from that fund.

The rule with respect to all permanent town funds should be the same. Thus the poor fund which has, by a vote of the inhabitants of the town to which it belongs, been appropriated to the use of the common schools, in consequence of abolishing the distinction between town and county poor, should be faithfully applied to the use of the schools in the town. The act of 27th April, 1829, provides, (sec. 8,) that the interest of the common school fund established in this manner shall be "applied to the support of common schools of such town," that is, of the town to which the fund belongs.

A different rule prevails with regard to the school moneys derived from the common school fund of the state, from taxation, and from accidental sources of contribution. In all such cases the general rule of apportionment and expenditure prevails. Thus if a joint district, lying partly in two towns, derives from those sources different sums of money in proportion to the number of children in each, the two sums must be applied equally to the benefit of all in the district, although one of the towns may have voluntarily raised twice the amount it derives from the school fund of the state, and the other only an equal amount.

I do not see how these rules affect the apportionment to be made by the commissioners of common schools. They distribute the school moneys, in all cases, according to the number of children in each district, whether joint or single, residing in the town. But it is a matter relating solely to the application or expenditure of the money by the trustees of school districts, who must see that it goes to the benefit of those who are entitled to it. I suppose however, my opinion is desired by way of advice or direction to the trustees of school districts.

The inhabitants of joint school district No. 2 in the towns of Otsego and Hartwick, *against* the trustees of said district.

If trustees engage a teacher for a specified term, and the inhabitants of a school district, without good cause, withdraw their children from the district school, and send them to a private teacher, the Superintendent will allow the greater part of the public money to be applied to the term for which the teacher was engaged by the trustees.

The inhabitants of school districts should sustain the trustees in employing competent teachers, and in their efforts to advance the standard of education.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *June 6, 1836.* In the matter of the application of certain inhabitants of school district No. 2, lying partly in the town of Otsego and partly in the town of Hartwick, for a division of the school moneys between the summer and winter terms, it being understood to be the intention of the trustees to

appropriate the whole amount to the summer school, it appears, that at the late annual meeting in the district no vote was taken with regard to the application of the public money; and immediately afterwards the trustees hired a teacher for twenty dollars per month, the compensation usually paid to male teachers for winter schools. Some of the inhabitants of the district being dissatisfied with the proceedings of the trustees, on account of the high wages to be paid to the teacher, set up a private school, and engaged a female to teach it, thus withdrawing from the district school a large number of the children, who would otherwise have contributed to its support.

This proceeding on the part of the persons who have separated themselves from the rest of the district, and are contributing to break down the common school, is highly censurable. The sole objection to the proceedings of the trustees is that they have agreed to pay higher wages than is necessary for a common school. It is not alleged that they have not engaged a competent teacher; on the contrary, it is stated that one of the objects of employing a teacher at high wages is to enable some of the scholars to receive instruction in higher branches than are usually taught in the district. So long as this object does not conflict with the interest of those who are pursuing less advanced studies, it deserves to be encouraged; and the Superintendent is unable to perceive that the course of the trustees has been oppressive or indiscreet. The great evil of the common school system is the want of competent teachers. This deficiency could be readily supplied, if the inhabitants of school districts were willing to pay persons well qualified to teach, a sufficient compensation to secure their services. The trustees of this district have shown a desire to elevate and maintain the character of their school: and so far as is proper the Superintendent feels disposed to sustain them in the effort. The district receives between fifty and sixty dollars of public money; enough to pay the wages of the teacher for nearly one-third of the entire year. Surely so liberal a contribution ought to secure a corresponding liberality on the part of those immediately benefited by it. It may seem unequal to pay at the same rate for children who study the common branches and for those who pursue studies of a higher grade. But from the nature of the common school system no distinction can be made. Ultimately all are equally benefited; for as small children advance, their contributions do not increase in proportion to the studies which they pursue, and thus their tuition costs them less than they would be compelled to pay if such a distinction were made. Every inhabitant of a school district who has children is interested in maintaining a respectable school. If the policy of a school district is to employ a teacher who is merely competent to

give instruction in the first rudiments, those whose children are young may be gainers, in a pecuniary point of view, by reason of the low wages paid; but they should not lose sight of the fact, that if the same policy is pursued, their children, as they advance to manhood, will not enjoy those facilities for the acquisition of knowledge which are necessary to make them respectable members of society, and to enable them to enter into successful competition with others for its honors and emoluments.

The Superintendent has always been accustomed to direct, when applications have been made to him for the purpose, that the public moneys received by a school district should be equally divided between the summer and winter terms. This case is distinguished from any other which has come before him. Although the trustees have acted in good faith, and have employed a teacher, against whom no charge is brought, a portion of the inhabitants have set up a school in opposition to the one established by the trustees, because they are unwilling to pay their just proportion of his wages. If by allowing the whole of the public money to be applied to the summer term, the Superintendent were sure that the effects would fall on those only who have taken this course, he would not interfere. But as innocent persons might suffer, and as he is unwilling to abandon altogether the principle of dividing the school moneys between summer and winter terms:

It is hereby ordered, that one-third of the public money received by the trustees of school district No. 2 aforesaid, for the present year, be reserved for the fall or winter term; and that the remaining two-thirds may, in their discretion, be applied in whole or in part to the summer term.

(ANONYMOUS.)

Children in county poor-houses cannot be sent to a district school, excepting by voluntary agreement with the trustees.

By JOHN A. DIX, *June 29, 1836.* Superintendents of the poor cannot claim, as matter of right, the admission of pauper children into the common school of the district in which the county poor-house is established. If they are admitted, it must be by a voluntary agreement with the trustees of the district.

(ANONYMOUS.)

When trustees of districts find it necessary in assessing a tax to proceed in the same manner as assessors of towns, they are allowed twenty days in addition to the month within which the tax list is required by law to be made out.

By JOHN A. DIX, *June 30, 1836.* When, in consequence of a claim by an individual to a reduction of his valuation, it be-

comes necessary to proceed in the same manner as the assessors of towns are required by law to do, the trustees of a school district are allowed, according to the construction which I have given to the statute, twenty days to complete the assessment of a tax in addition to the month within which the tax must be assessed and the tax list made out. Suppose trustees assess a tax twenty-five days after it is voted, and on that day a person claims a reduction. It is their duty to give a notice of twenty days, and then to meet and review their assessment. But if their right to complete the assessment expires at the end of the month after the tax is voted, it will be necessary to call another meeting with a view to vote the tax anew. By the construction above given, the two provisions are reconciled, and the embarrassment referred to can never occur. The law gives a twofold direction to the trustees, and both must be obeyed. The tax list must be made out within one month, but the meeting for reviewing the assessment is an independent act, and the time allowed for performing it must be deemed to be exclusive of the time prescribed for assessing the tax. If a different construction were adopted, it would be necessary that every tax list should be made out within ten days after the tax is voted, in order to enable the trustees to be prepared for a claim to a reduction. An interpretation which shall avoid this inconsistency and save both provisions of the law, is right in itself, and does not, as I perceive, violate any settled rule of construction.

(ANONYMOUS.)

If the assessment of a tax is delayed by an appeal, the time is not to be computed as part of the month within which the tax list must be made out.

By JOHN A. DIX, *July 2, 1836*. Where the assessment of a tax is delayed by an appeal, the time intervening between the presentation of said appeal and the decision thereon, is not to be computed as a part of the month within which the tax list is required to be made out. The regulations of the Superintendent relating to appeals, provide, that "after copies of the appeal in any case have been served, all proceedings, from the operation of which relief is sought, will be suspended until the case is decided." While an appeal is pending, the proper officers have no authority to act, and when that disability is removed, their rights and the rights of those whose agents they are, are not to be prejudiced by a delay for which they are not answerable.

The Commissioners of Common Schools of the town of Chatham, *ex parte*.

The number of a joint school district should not be changed without the concurrence of the commissioners of all the towns within which the district partly lies.

This was an application for the opinion of the Superintendent as to the authority of the commissioners of common schools of the town of Chatham, to alter the number of a school district lying partly in that town and partly in an adjoining town.

By JOHN A. DIX, *September 1, 1836.* The commissioners of common schools of one town should not alter the number of a school district lying partly in another town without the concurrence of the commissioners of the latter. By referring to sub. No. 3 of sec. 19 of the common school act, (1 R. S. page 470,) you will perceive that the commissioners of common schools in each town are required "to describe and number the school districts, and to deliver the description and numbers thereof in writing to the town clerk," &c. The specification of the powers of the commissioners under this section, has reference to single districts, or districts lying wholly within the limits of one town. But with respect to joint districts, or districts lying partly in several towns, none of those powers can properly be exercised, excepting with the concurrence of the commissioners of all the towns in which such districts partly lie. The numbering of a district may be considered as an act pertaining to the regulation of the district; and by reference to section 20, page 471, 1 R. S. you will perceive that in respect to joint districts, or districts formed out of two or more adjoining towns, the concurrence of the major part of the commissioners of each of such adjoining towns is necessary, in order to "regulate" or alter them. When, therefore, the number of a joint district is altered, the commissioners of all the towns of which such district constitutes a part, should meet together and concur in the alteration, and the new number must be delivered in writing to the town clerk of each town.

Harvey Loomis, a taxable inhabitant of joint school district No. 1 in the towns of Milton and Ballston, *against* the Trustees of said district.

If a person removes from one school district into another in the same village, and takes lodgings for his family until he can find a permanent place of residence to suit him, he is a taxable inhabitant of the district into which he has so removed.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DEX, *September 10, 1836.* On the 16th day of January, 1836, the commissioners of common schools of the towns of Milton and Ballston divided joint school district No. 1, lying partly in both those towns, and comprising within its boundaries the village of Ballston Spa, and formed a new district by the designation of district No. 12. By this division, Harvey Loomis, who had for several years been a resident of said district, and of that part of it which was set off to No. 12, became an inhabitant of the latter district. About the first of May, the said Loomis removed with his family into that part of the former district which retained its original number, and took lodgings at the house of his brother-in-law, Reuben Westcott, having sold his dwelling-house in district No. 12, and surrendered the possession thereof to the purchaser on the said first day of May. On the 7th of May a site was fixed, and a tax voted for a school-house in district No. 1. On the 26th of May, Harvey Loomis gave notice that he should claim a reduction of the amount of his assessment. The trustees made out their tax list on the 6th of June, having given twenty days' notice of the time and place at which they would meet to review their assessment. At the time and place appointed, Harvey Loomis did not appear to claim a reduction of the amount of his tax. He was therefore assessed on \$20,000, the amount of his personal property as ascertained by the last assessment roll of the town, and was taxed \$80, his just proportion of the whole tax. From this proceeding he appeals, and claims a total exemption on the ground that he was not a resident of the district at the time the tax list was made out.

The liability of Mr. Loomis to be taxed in district No. 1 depends altogether on the fact of his being a resident of the district at the time the tax list was made out. If he was so, he was liable to be taxed. If not, he was not taxable, and the trustees should not have included him in the tax list. The question of residence is one which is to be settled by the facts of the case, and with regard to these there is no dispute. Mr. Loomis went into district No. 1 with his family, and engaged rooms there until he could find a permanent place of residence. The act of removing from one house to another in the same village, even as preparatory to a future permanent removal from the county, did not, so far as regards the village and town, amount to a change of residence. The intention of establishing himself permanently at some future time at a different place, if he should succeed in finding one to suit him, seems to the Superintendent to be conclusive against the position assumed by him, that he had changed his residence. The proposed change of residence is future and contingent, and must be consummated by an actual removal; and certainly such actual removal is altogether

inconsistent with the intention to remove at a future time. Mr. Loomis is clearly taxable in the town. Did not the assessors include him in the town assessment for the present year? Doubtless they considered it their duty to do so. The fact that Mr. Loomis went to the city of New-York with his family shortly after he took rooms at the house of his brother-in-law, Mr. Westcott, and afterwards travelled into the western part of the state, does not, when taken in connection with other circumstances, vary the case; nor does the fact of going to Troy in quest of a "suitable place for the intended permanent future abode of his family," amount to an actual change of residence. At the termination of these several movements, he regularly returned to the village of Ballston Spa; and if his intention can be inferred from the facts, it would seem to have been to make that village his temporary place of abode until he could find a permanent one. Certainly, there was not such an actual removal as to terminate his residence in that village.

The same reasoning is applicable to the question of his residence in district No. 1. He ceased to be an inhabitant of district No. 12 when he gave up the possession of his house and took rooms in the former district, and by virtue of this removal from a house in one district to a house in another in the same village, he became an inhabitant of the district into which he so removed, unless he lost his residence in the village altogether. This point having been disposed of, he must be considered an inhabitant of district No. 1 at the time the tax list was made out, and he was therefore taxable on his personal property for common school purposes. He might have appeared and claimed a reduction of his tax, agreeably to his notice to the trustees; but having failed to do so, the tax must be collected as assessed.

It is hereby ordered, that the appeal of Harvey Loomis aforesaid, be, and it is dismissed.

(ANONYMOUS.)

The collector of a school district is answerable for moneys lost to the district by his neglect, though he may not have given a bond to the trustees. If the term of service of the trustees and collector has expired, and a warrant for the collection of a school bill has run out in the hands of the latter, the successors of such trustees must renew the warrant and direct it to the successor of such collector.

By JOHN A. DIX, *September 12, 1836.* If by the neglect of a collector, moneys which might have been collected by him within the time limited, are lost to the district, he is liable for the amount, whether he has given a bond or not to the trustees. The bond is an additional security; but if it is not required of him, he is not released from any obligation which the law im-

poses on him. The trustees may require a bond of the collector or not, as they please. If they do, they may, in case of his delinquency, look to his sureties: If they do not, they must look to him for an indemnity against losses sustained by the district.

If the term of service of both trustees and collector has expired, and a warrant for the collection of a school bill has run out in the hands of the latter, the successors in office of such trustees must renew the warrant, and deliver it to the successor of the collector; but the collector in whose hands the warrant runs out is answerable if there is any loss through his neglect.

The Trustees of school district No. 2 in the town of Manheim, *ex parte*.

Grass land and ploughed land are taxable to the non-resident owner: but a wood lot used for manufacturing maple sugar is not taxable to such owner.

In school district No. 2 in the town of Manheim, there were three pieces of land belonging to A. B. residing in another district. One piece was used for mowing, another for tillage, and the third was a wood lot used for manufacturing maple sugar. The owner had no agent or servant in charge of either piece. The question proposed was, whether either or all were taxable to the owner in district No. 2?

By JOHN A. DIX, *September 12, 1836*. A. B. is liable to be taxed on the piece of land "occupied as grass land and plough land," but not on the wood lot used for manufacturing maple sugar. The latter not being cleared and cultivated is not taxable to him, as he is a non-resident, and has no agent in the district in the occupation of it.

William H. Strunk, a taxable inhabitant of school district No. 18 in the town of Ellicott, *against* the Trustees of said district.

Commissioners of common schools have no authority to declare void the proceedings of school district meetings.

If, through the neglect of trustees, a tax to build a school-house is not collected within a reasonable time, and before the collection is made, a new district is formed and an inhabitant set off to it, the Superintendent will remit so much of the tax to build a school-house in the district from which such inhabitant was taken as was assessed to him.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *September 12, 1836*. On the 16th day of November, 1835, the inhabitants of school district No. 18 in the town of Ellicott, at a special meeting called for the purpose, voted that the site of the school-house should be changed and a new house erected. The meeting was then adjourned to the 16th

of November, and a notice given, by posting up the same, setting forth that the meeting would be held at the time and place agreed on, to meet the commissioners of common schools, for the purpose of establishing a site for the new school-house, and to attend to other business. At this meeting the commissioners declared the proceedings of the previous meeting void, and the inhabitants voted to change the site of the school-house, and to raise a tax of \$200 to build the new house. The tax was assessed accordingly, and at the time it was so assessed, William H. Strunk, being a taxable inhabitant of said school district No. 18, was taxed \$40. The tax has, however, not been collected of said Strunk. Subsequently to this proceeding, a new school district was formed by the commissioners of common schools, by the designation of district No. 3, and said Strunk was included in it. A tax has been laid in the latter for a school-house, and said Strunk has paid his proportion of it, amounting to \$39.83. He is now called on to pay the tax of \$40 which was assessed to him in district No. 18, in 1835, and he applies to the Superintendent to decide whether he shall pay it. The trustees of No. 18 have presented their answer to the application, and it has been duly considered. The facts set forth by the appellant, not having been disputed in the answer of the trustees, are presumed to be truly stated.

Mr. Strunk was clearly liable to be assessed in district No. 18. He was a taxable inhabitant at the time the tax list was made out, and there is nothing in the proceedings of the meeting, at which the tax was voted, to justify the Superintendent in setting them aside. The proceedings of the commissioners of common schools, in declaring the meeting of the 16th of October void, were wholly without authority. They had no jurisdiction in the case; and as the proceedings of that meeting were not appealed from within the time limited by regulation, they will be presumed to have been regular. Nor have the commissioners any authority to fix a site for the new school-house, though they might as individuals, with a view to settle a controversy, act as umpires, at the request of the inhabitants, between the contending parties. The notice for the adjourned meeting was regular, and there can be no good foundation for the pretence that the vote to raise a tax took any one by surprise. The vote to build a new school-house had been taken thirty days before, and the erection of the house given to the lowest bidder. The meeting was then adjourned for one month, and it was but reasonable to expect that at the time appointed the necessary sum would be voted for the erection of the house. Indeed, as the adjournment was for one month only, no notice was necessary. At all events,

as there was no legal defect, the proceedings will not, after the lapse of ten months, be disturbed.

Mr. Strunk was, therefore, liable to pay his tax in district No. 18. But it is now to be considered whether he has not equitable rights, which may fairly be set up in bar of the payment of the tax. It is proper to remark, that the tax in No. 18 ought to have been promptly collected. In deferring it for so long a period, the trustees have been guilty of neglect, and others must not be prejudiced by the delay. That Mr. Strunk will be so prejudiced, without the interposition of the Superintendent, will be manifest, when it is considered how he would have stood if they had performed their duty. It is provided that the commissioners of common schools, whenever a new district is formed, shall apportion to it a just proportion of the value of the school-house "and other property" of the districts from which it is taken. District No. 18 had no school-house; but if the trustees had collected, with proper promptitude, the tax voted to build one, they would have had a sum of money, of which Mr. Strunk would have been entitled to a share, when he was set off to the new district. Through the neglect of the officers of the district, that sum had not been collected; but in the equitable jurisdiction of the Superintendent over all such matters, a remedy may readily be provided for those cases, in which, without his interposition, injustice would be done to third persons. It should be observed, in justice to the officers of the district, that the time for delivering to the collector a warrant for the collection of a tax is not prescribed. But the statute provides that every tax shall be assessed and the tax list made out within one month after it is voted; and the Superintendent has always required that the warrant should be immediately delivered to the collector. If this had been done, and the tax collected, it would have been the duty of the commissioners in forming district No. 3 and annexing Mr. Strunk to it, to apportion to that district so much of the sum collected to build a school-house, as it would have been entitled to receive upon the basis of his property. According to the rule of apportionment provided by law, the sum so allowed to district No. 3 would have been precisely what he would have paid, (\$40,) and this sum would have been credited to him in reduction of his tax in district No. 3 for building a school-house.

The duty enjoined upon the Superintendent in this case, by every consideration of fairness and equity, is either to remit the tax altogether, or to provide for apportioning to No. 3 so much of the value of the school-house in No. 18, or so much of the amount raised to build one, as it is justly entitled to receive on account of Mr. Strunk's taxable property. Either course would have, so far as respects the latter district, the same result. The

amount of Mr. Strunk's tax would be raised upon the remaining inhabitants of the district. As the last of the two courses suggested would be attended with some embarrassment, and as the ends of justice will be equally attained by either, he prefers to remit the tax assessed on Mr. Strunk, and leave it to district No. 18 to make up the deficiency.

It is accordingly ordered, that the tax assessed on William H. Strunk, for building a school-house in district No. 18 in the town of Ellicott, amounting to \$40, be and it is hereby wholly remitted; and the trustees are hereby authorized and required to re-assess the amount of said tax on the remaining inhabitants of said district.

The Trustees of school district No. 6 in the town of Lowville, *ex parte*.

When the site of a district school-house is changed pursuant to the act of 17th February, 1831, the inhabitants have power to direct the sale of the former lot and site.

The site of the school-house in district No. 6 in the town of Lowville, was changed by a vote of two-thirds of the inhabitants, with the consent of the commissioners of common schools of the town, the district not having been altered from the time the school-house had been built. The question proposed to the Superintendent was, whether the trustees, under the act of 11th May, 1835, chap. 308, laws of 1835, could dispose of the former lot and site, or whether a vote of the inhabitants was necessary under the act of 17th Feb. 1831?

By JOHN A. DIX, *September 26, 1836*. By the act of 17th Feb. 1831, the inhabitants of a school district may, whenever the site of the school-house has been lawfully changed as therein provided, direct the sale of the former site or lot and the buildings thereon, on such terms as they shall deem most advantageous to the district. They may of course exchange the old site for a new one, if they have an opportunity of doing so; but a vote of the inhabitants is necessary to authorize the trustees to sell or convey it, the site having been changed pursuant to the act referred to.

(ANONYMOUS.)

Whenever the site of a district school-house is legally changed, otherwise than by the act of 17th February, 1831, the trustees have power to sell and convey the former lot and site without a vote of the inhabitants of the district.

By JOHN A. DIX, *September 27, 1836*. The act of 17th of February, 1831, prescribes the mode in which a school-house and site shall be disposed of, when the latter is changed

in pursuance of the provisions of that act; that is, where the district has not been altered after a school-house has been built or purchased. In every such case the inhabitants must give their direction as to the terms of the sale, and the trustees may convey the lot in pursuance of such direction.

Section 4, of the act of May 11, 1835, chap. 308, laws of that year, authorizes the trustees of a school district, whenever the site of the school-house shall have been legally changed, to sell and convey the former site and the building or buildings thereon, on such terms as they shall deem advantageous to the district.

This act was intended to reach cases which were not provided for by the act of 1831; as where a district has been altered after a school-house has been built or purchased. In such a case, there was no power to dispose of the former site, as the provisions of the act of 1831 were applicable only to unaltered districts.

The only question, which can arise is, whether the act of 1831 is so far modified by the act of 1835, that the latter has become applicable to cases arising under the former? I am of opinion that the act of 1831 is not affected by the provisions of the act of 1835. The 3rd section of the latter, provides that "those parts of the provisions of the Revised Statutes which are inconsistent with the provisions of this act are hereby repealed." This section was originally reported as a separate bill, but on its final passage it was incorporated with the other sections of the act of 1835, so that in fact the repealing clause was intended to apply only to the subject matter of the 3rd section. This reference to the legislative history of the act would not be conclusive as to its intention, if its language was inconsistent with it. But it will be observed that the repealing clause is applicable only to such parts of the Revised Statutes as are inconsistent with the provisions of the act of 1835. The act of 1831 does not constitute a part of the Revised Statutes, although by that act one section of the statute entitled "Of common schools," was repealed.

The terms of the act of 1835 are very comprehensive. They give trustees authority to sell and convey the former lot, &c. "whenever the site of the school-house in any district in this state shall have been legally changed;" and yet, as the act of 1831 is neither referred to nor repealed, I am disposed so to construe the act of 1835 as to maintain the provisions of both in full force. There is no inconsistency in them. The former refers to a single class of cases, while the latter embraces all others.

(ANONYMOUS.)

The public money cannot be paid to teachers for services rendered during the year preceding the receipt of such moneys.

The expense of conveying a teacher home cannot be paid by tax, or included in a rate bill.

If trustees refuse to prosecute their predecessors for an unpaid balance, there is no mode of compelling them to do so.

By JOHN A. DIX, *September 27, 1836.* Trustees of school districts have no right to pay the public money received in April to teachers for services rendered before the preceding first of January. It must all be paid for services actually rendered during the year in which it is received.

The expense of conveying a teacher home is not a legitimate object of taxation, nor can the amount paid for that purpose be included in a rate bill. If paid at all, it must be by voluntary subscription.

If a former trustee has money in his hands belonging to the district, the trustees in office should prosecute him for the amount as an unpaid balance, sec. 102, page 486, 1 R. S. If they refuse to do so, I know no way of compelling them. The only remedy is to turn them out of office at the end of the year, and put in others who will perform their duties.

Every trustee who refuses or neglects to render an account of moneys received and expended, is liable to a penalty of \$25, sec. 100, page 486, 1 R. S. The penalty may be recovered of each trustee separately.

If trustees neglect to report at the proper time, a report ought to be received from them subsequently, without insisting on the forfeiture.

The Commissioners of Common Schools of the town of Almond, *ex parte.*

Trustees of school districts must see to the execution of all contracts entered into by them; but this rule will not be allowed to interfere with the legal rights of third persons.

Two trustees of a school district engaged a teacher for one year, in pursuance of the request of the inhabitants at a special meeting. Before the expiration of his term, new trustees were elected. The question arose whether the trustees who made the contract with the teacher should attend to the settlement of his accounts, or whether he must look to the trustees in office.

By JOHN A. DIX, *October 19, 1836.* The Superintendent of Common Schools has always required that trustees should see to the execution of all contracts entered into by them. This rule was designed as a prudential regulation for their government,

and not to be carried so far as to interfere with the legal rights of third persons. Thus, if, notwithstanding the directions of the Superintendent, trustees go out of office without settling with a teacher employed by them, he has no legal remedy against them; and if he is compelled to seek redress through the judicial tribunals, he must bring his suit against their successors, or the trustees actually in office. The supreme court of this state (7 Wendell, page 181,) has decided that contracts for teachers' wages by trustees of school districts are binding on their successors in office.* This settles the whole question.

The Clerk of joint school district No. 14 in the towns of Marcellus and Skaneateles, *ex parte*.

A refusal to serve as an officer of a school district vacates the office.

A refusal to serve must be shown by an express declaration, and cannot be inferred from a neglect to perform the duties of the office.

The following question was presented for the decision of the Superintendent by the clerk of joint school district No. 14 in the towns of Marcellus and Skaneateles: Does a neglect to act for any given time constitute a refusal to accept the office of trustee of a school district? For instance: A tax is voted, and the trustees omit to make out a tax list for one month. Can new trustees be then chosen?

By JOHN A. DIX, November 14, 1836. If trustees and other district officers are regularly chosen at an annual meeting; others cannot be elected in their places until vacancies occur, or until their term of office expires. A refusal to serve constitutes a vacancy. It appears to me that there must be an express declaration by the party of his determination not to act, in order to authorize a prosecution under the provision which annexes a penalty of five dollars to a refusal to serve. Neglect of the duties of the office does not constitute such a refusal as is contemplated by the provision referred to; for to such neglect (which by a decision of the supreme court, must be a general neglect, and not an omission to perform any specific act,†) a penalty of ten dollars is annexed; and this penalty is only incurred in cases in which the party has not "refused to accept." A refusal to serve must therefore, I think, be shown by an express declaration to that effect, and cannot be inferred from a neglect to perform the duties of the office.

* See a case reported at page 191.

† See a case presented by the inhabitants of this district, page 164.

The Commissioners of Common Schools of the town of Greene, *ex parte*.

If a tax is raised in a school district for any object, and the whole amount is not required, the balance may be applied by vote of the district to any other authorized object.

A tax was raised in a school district in the town of Greene for the purpose of building a school-house, and on account of a reduction in the amount paid on the contract, as an offset to a part of the work not properly executed, the whole sum collected for the purpose was not expended. The question presented to the Superintendent was, whether the balance thus remaining in the hands of the trustees could, by a vote of the district, be appropriated to any other object?

By JOHN A. DIX, *November 21, 1836*. If a tax is voted for any object, and the whole amount raised is not expended, the inhabitants of the district may by vote apply it to any other object for which a tax may by law be voted. The trustees have no power to do so without such a vote.

The Trustees of joint school district No. — in the towns of Locke and Groton, *ex parte*.

In assessing taxes in joint school districts, the last assessment roll in each town must be followed with respect to the taxable property within it, although the assessors of the two towns may have different standards of valuation.

This was an application to the Superintendent for his direction in a case in which the taxable property of a joint school district was unequally assessed in consequence of the different standards of valuation assumed by the assessors of the two towns in which the district was situated; the assessors of one town having, as the trustees alleged, assessed the property within it at its full value, while the assessors of the other had estimated the property within it at about one quarter of its real value.

By JOHN A. DIX, *November 22, 1836*. Taxes for common school purposes must be assessed according to the valuations of property as ascertained by the last assessment roll of the town. There is no authority to depart from it excepting in two cases specified in the common school act, viz: where a reduction is claimed, and where the valuations cannot be ascertained from the last assessment roll of the town. In joint school districts the roll of each town must be consulted as to the persons residing in each. If the assessors of the two towns have different standards of valuation there is no remedy for it. I have no power to vary the assessments of town assessors, nor do I know any mode of correcting such inequalities excepting by the equalization to be

made by the boards of supervisors. I regard the practice of assessing property at one half, and sometimes one quarter of its real value, as one of the greatest abuses that exist; and it is difficult to comprehend how assessors, sworn to discharge their duties faithfully, should totally disregard in many cases the legal requirement which makes it incumbent on them to estimate property "at its full value, as they would appraise the same in payment of a just debt due from a solvent debtor." In most cases, doubtless, assessors consider themselves justifiable in adopting the standards of previous years; but usage certainly constitutes no justification of such a practice, nor is a public officer warranted in abusing his official trust because his predecessor has done so before him.

The Trustees of school district No. — in the town of Bridgewater, *ex parte*.

A tax cannot be voted for arrearages, or to reimburse trustees for moneys expended by them, unless it appears by the vote that the money is to be applied to one of the objects for which taxes may by law be voted.

This was an application for the opinion of the Superintendent with regard to the legality of a vote to raise a tax to pay certain arrearages due the trustees of one of the school districts in the town of Bridgewater, on account of fuel which they had provided, and repairs made on the school-house and paid for by them. The vote did not specify the objects for which the expenditure was to be made, but stated generally that it was to reimburse the trustees for moneys expended by them.

By JOHN A. DIX, *December 12, 1836*. A tax "for arrearages" or "to reimburse the trustees for moneys expended by them," is not legal. Taxes can only be laid by the inhabitants of school districts for certain objects enumerated in the statute entitled "Of common schools;" and it must appear by the resolution or vote imposing the tax, that the amount to be levied is to be appropriated to one of those objects. If the trustees of a district expend money for repairs or fuel, and the inhabitants wish to reimburse them, a vote to that effect may be passed, and a tax raised; but the vote must show that the money is to be applied to reimburse the trustees for a sum or sums expended for repairs or fuel.*

* See the case of the trustees of joint school district No. 17 in the towns of Catharine and Catlin, page 218.

The Trustees of school district No. — in the town of Maryland, *ex parte*.

If a special meeting is called for the purpose of laying a tax to build a school-house, the notice is sufficient to justify the inhabitants in voting a tax to purchase a house already constructed.

In this case a notice was given for a special meeting, setting forth that the object of the meeting was to raise money to build a school-house. The inhabitants being assembled, voted to purchase a house, which was offered to them for a school-house, and a tax was laid accordingly. The question submitted to the Superintendent was, whether the notice was sufficient to justify the proceeding?

By JOHN A. DIX, *December 12, 1836*. The proceeding in your school district, in relation to voting a tax to purchase a school-house, was legal, and the money ought to be collected promptly. I suppose the only question is, whether the notice was sufficient? On this point there can be no reasonable doubt. A call of a meeting to raise money to build a school-house, so clearly indicates the object that no objection can properly be made, if, after full consideration at the meeting, it is determined to purchase a house, instead of building one.

A. B. a non-resident owner of property in school district No. 21 in the town of Chemung, *ex parte*.

The residence of the parent is the residence of the child.

If a non-resident owner of taxable property sends his children into the district in which such property lies, for the purpose of attending school, they have a strong equitable claim to be received, unless by their admission the school would become too crowded.

A. B. a taxable inhabitant of school district No. 21 in the town of Chemung, moved out of said district into an adjoining one, still retaining his property in the former, in which he had, during the preceding two or three years, paid for the erection of the school-house more than one-fourth part of its whole value. As he was desirous of continuing his children at the school in district No. 21, he sent them into the district and procured board for them in the neighborhood of the school-house, and sent them to the school until they were dismissed from it by the trustees, on the ground that their parents were non-residents. The question presented to the Superintendent was, whether this proceeding on the part of the trustees was legal?

By JOHN A. DIX, *December 12, 1836*. I am sorry to say that according to the whole course of the decisions of the Superintendent, your children have not a legal right to attend the school in district No. 21, though you are taxable in that district. Their

exclusion by the trustees cannot, however, be regarded otherwise than as exceedingly illiberal, unless the school would, by admitting them, become too crowded. The rule which the Superintendent established at a very early day, is that "the residence of the parent is the residence of the child, and that boarding children in a school district does not give them the right to attend the district school." The rule was considered to be in strict accordance with the intention of the law authorizing the convenient division of towns into school districts, and was also deemed indispensable to guard against the evils of withdrawing from one school and conferring on another the support to which the former was justly entitled; evils which would often be felt in the absence of such a rule. At the same time I have always considered persons owning taxable property in a school district, though non-residents, as having a strong equitable claim to a privilege for their children in the school of the district in which they are taxable. Their property contributes to support the school, and their children should equitably be allowed to attend, on paying their proper proportion of the teacher's wages. In this respect they stand on ground essentially different from that of persons sending children into districts in which they have no taxable property. This is one of the instances, however, in which a regard to the general design of the law cannot be made to bend to the equity of a particular case. Still I am sure that the exclusion of children from a school under such circumstances, though the trustees have the legal right, would be universally regarded as unjust and illiberal, unless by their admission the school would become so crowded as to interfere with the instruction of the children of resident parents.

The taxable inhabitants of school district No. 10 in the town of Schodack, *ex parte*.

Colored persons may vote at school district meetings.

This was an application for the opinion of the Superintendent by several of the taxable inhabitants of school district No. 10 in the town of Schodack, with regard to the right of colored persons, who had been assessed to pay highway taxes, to vote at school district meetings.

By JOHN A. DIX, *December 27, 1836*. Colored persons have a right to vote at meetings in the school districts in which they reside, if they have the requisite qualifications of property, or if they have been assessed to pay highway taxes in the town during the year in which they vote, or the preceding year. The construction which has been given to the statute relating to the qualifications of voters in school districts, with respect to aliens,

is considered equally applicable to this case.* Indeed, colored persons are permitted to vote at popular elections under certain circumstances, and the construction referred to may, perhaps, be urged with greater force in their favor than in the case of aliens, who are not allowed in any case to vote at such elections.

The taxable inhabitants of school district No. 6 in the town of Clarkstown, *ex parte*.

In assessing a tax for school district purposes, personal notice to the persons interested need not be given where a reduction is claimed, or where the valuations of property cannot be ascertained from the last assessment roll of the town.

This was an application by the taxable inhabitants of school district No. 6 in the town of Clarkstown for the opinion of the Superintendent, with regard to the nature of the notice to be given when the trustees of a school district, in assessing a tax, do not follow the last assessment roll of the town.

By JOHN A. DIX, *January 12, 1837.* In assessing a tax, a personal notice is not necessary where a reduction is claimed, or where the valuation of taxable property cannot be ascertained from the last assessment roll of the town. The notice is such a one as town assessors are required to give: that is, a notice must be put up in three or more public places within the district.

It might be supposed, at first glance, that under the provisions of sec. 80 of the revised statute in relation to common schools, a personal notice to the individuals immediately concerned was necessary, as the trustees are required, in the cases for which those provisions are framed, "to ascertain the true value of the property to be taxed from the best evidence in their power, giving notice to the persons interested, and proceeding in the same manner as the town assessors," &c. But I am satisfied that the intention of the law was otherwise. If I err in this construction, it appears to me that a personal notice to every inhabitant would be necessary whenever a reduction is claimed. For if the property of an individual be assessed on the town roll at \$10,000, and he claims a reduction to \$5,000, all the other taxable inhabitants are interested in resisting the claim, because if it is allowed, their own assessments must be relatively increased. The imposition of taxes in school districts is usually a matter of notoriety; and if, in cases where the town assessment roll does not furnish all the facts necessary to enable the trustees to assess them, or where an individual claims a reduction of the valuation of his property as ascertained by that roll, a notice is put up in three public places in the district, it can rarely happen that all concerned are not ap-

* See a decision by A. C. Flagg, March 15, 1831, page 76.

prized of the proceedings of the trustees so as to have an opportunity of protecting themselves against unjust assessments.

Pomeroy Jones, a taxable inhabitant of joint school district No. 5 in the towns of Vernon and Westmoreland, *against* the Commissioners of Common Schools of said towns and of the town of Kirkland.

Proceedings void for want of authority will be declared so, on application to the Superintendent, after the expiration of the time limited for bringing appeals. Trustees of school districts should not give a general consent before hand to alterations to be made in their school districts, but such consent should be limited to specific alterations.

If parties are apprized that proceedings are to be objected to on the ground of illegality, it is their own fault if they do acts, by virtue of such proceedings, without assuring themselves that they are legal.

The facts of the case are fully stated in the Superintendent's decision.

By **JOHN A. DIX**, *January 23, 1837*. This is an appeal by Pomeroy Jones, a taxable inhabitant of school district No. 5 lying partly in the town of Vernon and partly in the town of Westmoreland, from the proceedings of the commissioners of common schools of said towns and of the town of Kirkland, in annexing to it part of school district No. 6 lying partly in the town of Westmoreland and partly in the town of Kirkland, and from the proceedings of the commissioners of the two former towns in forming school districts No. 21 and 22. The facts of the case are as follows:

On the 14th day of March, 1836, the commissioners of common schools of the towns of Vernon, Westmoreland and Kirkland set off to joint district No. 5 in Vernon and Westmoreland, all that part of joint district No. 6 in Westmoreland and Kirkland, which lies on the Seneca turnpike road. To the record of this alteration the consent of the trustees of neither of the districts is annexed.

On the 22d day of March, eight days after the above alteration, orders were issued by the commissioners of common schools of the towns of Westmoreland and Vernon forming two new districts by the designation of districts No. 21 and 22. District No. 21 was formed from part of No. 5 and from part of No. 2 in the town of Westmoreland, together with that part of district No. 6, which, by the order of the 14th of March, was set off to No. 5. To this alteration the consent of the trustees of district No. 5 is given: but neither the consent of the trustees of No. 6 nor of No. 2 is made a part of the record. District No. 22 was formed from part of No. 5 and part of district No. 11 in Westmoreland. To

the record of this alteration the consent of the trustees of both districts is annexed.

As a preliminary question it becomes necessary to inquire whether the rules of the Superintendent, in relation to appeals, have been complied with? It appears by reference to the papers submitted by the appellant that eight months were allowed to elapse before his appeal was presented. His excuse for so great a delay is, that he was absent in Albany when the proceedings complained of took place. And that he could not, for a long time after his return, procure such proof of the illegality of the proceedings as to warrant an appeal. It is doubtless within the knowledge of the appellant that investigations are made by the Superintendent upon other grounds than an allegation of illegality. Proceedings, though strictly legal, may be set aside if found grievous to complainants. When proceedings are objected to because they are merely irregular, or because the objectors are aggrieved by them, appeals must be presented within thirty days. If no other reasons were urged in this case, the excuse offered by the appellant would not be considered sufficient. The facts were all within the compass of a few neighboring districts, and with due diligence it would have been extraordinary if they could not have been ascertained. But the appellant further alleges that he has, since the last of October, discovered facts and proofs of which he had no previous knowledge; and which show the proceedings of the commissioners to be null and void. If this position can be established, the appeal will be entertained. Void proceedings, or acts done wholly without authority, will be pronounced void, when they are brought up for adjudication, although they may not have been objected to within the time limited for presenting appeals.

The first defect in the proceedings of the commissioners is the want of the consent of the trustees of school districts No. 5 and 6 to the alteration occasioned by the addition of part of the latter to the former. This defect does not render the proceedings void. The commissioners of common schools had authority to make the alteration without such consent; but it could not take effect until three months after notice in writing to some one or more of the trustees of each district.

It is alleged by the commissioners of common schools of the towns of Westmoreland and Vernon, that the formation of districts No. 21 and 22 was agreed on by them on the 14th of March, although the orders were not issued until the 22d. If this were so, the consent of the trustees of school districts No. 5 and 6 to the alteration occasioned by adding to the former part of the latter, was requisite, to enable the commissioners of the towns of Westmoreland and Vernon to set off the part so added; otherwise

the alteration would not take effect until the expiration of three months after notice in writing to the trustees of both districts. But the order creating district No. 21 shews on its face a want of authority on the part of the commissioners of common schools of the towns of Westmoreland and Vernon to form it. The district is, according to the order, formed from part of district No. 5, lying partly in the town of Westmoreland, and partly in the town of Vernon; and part of district No. 6, lying partly in the town of Westmoreland, and partly in the town of Kirkland. The commissioners of common schools of the town of Kirkland should therefore have united in the order. The trustees of district No. 6 swear that they never consented to a transfer of part of that district to No. 5. The order of the 14th March could, therefore, not have gone into effect; and although the part of No. 6 added to No. 5 was wholly within the town of Westmoreland, it was, at the time district No. 21 was formed, part of joint district No. 6, which was partly in the town of Kirkland; and the commissioners of the latter town must have united in the order forming that district, to give it validity. If the order of the 14th of March, setting off to No. 5 the part of No. 6 which was subsequently added to No. 21, had gone into effect, the formation of the latter would have been valid without the concurrence of the commissioners of Kirkland. But with what propriety can this be assumed, when the trustees of No. 6 swear that they never consented to the transfer of a part of that district to No. 5, and when the order of the 22d March, issued by the commissioners of Westmoreland and Vernon, sets forth, that part of the former is taken to form the new district? The two trustees of district No. 6, who swear that they never consented to a transfer of part of that district to No. 5, state in an affidavit appended to the papers of the respondent, that they gave "their consent to have that part of district No. 6, lying on the Seneca turnpike road, set off from said district, for the purpose of forming a new district and such others as the commissioners should think proper." No such consent is annexed, as it should have been, either to the order of the commissioners dividing district No. 6, or their order forming district No. 21. Besides, if such consent was given to the extent above stated, it was wholly unjustifiable on the part of the trustees. They are the immediate guardians of the interests of their district; they are presumed to understand its wants; and it is a misuse of the authority confided to them, to give a sweeping consent to any alterations in their district, which the commissioners may choose to make. The law has given them power to prevent alterations from going into effect for three months, by declining to give their consent to them; and the design was, to enable the trustees to protect themselves and the in-

terests of their district. But by consenting beforehand to such alterations as the commissioners may think proper, the trustees, if such consent is valid, disarm themselves, and put it out of of their power to object at a subsequent time, to alterations which they may not approve. The consent of trustees should only be given to specific alterations; and if their consent is obtained in advance, the precise alteration to which it is intended to be given should be fully and explicitly stated.

In addition to these objections, the order of the 22d March, forming district No. 21, includes as part of it, two persons, Messrs. Roberts and Osgood, belonging to district No. 2 in Westmoreland; and it does not appear by the record that the consent of the trustees of that district to the alteration was obtained, or that any notice of it was served on them. Indeed, district No. 2 is not named in the order, nor does it appear that any part of it is included in the new district, except by referring to Calvin Osgood's east line as one of the boundaries of No. 21. The order is, therefore, on its face both defective and contradictory, in setting forth that the new district is to be formed "partly out of district No. 5 and partly out of district No. 6." while it actually includes by name one individual belonging to No. 2, without mentioning the latter district at all. It is incidentally mentioned in a parenthesis in an affidavit made by the commissioners of common schools of the town of Westmoreland, that the transfer of Messrs. Roberts and Osgood was with the consent of the trustees of No. 2; but under any circumstances, it is conceived that the fact should have been explicitly averred, if it was impossible to produce the written consent.

The Superintendent is aware that the formation of a new district from part of No. 6 had been for some time under discussion and that the propriety of the measure had been conceded by the trustees and a majority of the inhabitants of the district; but the commissioners, in adopting an indirect course of proceeding, should have taken care to keep within the limits of their authority. Such is the condition of the records, now, that the Superintendent cannot declare their proceedings to be valid, without assuming that the consent of the trustees of district No. 6 was actually given to the alteration made by the order of the 14th of March, though their affidavit shows the contrary; that the two new districts were actually created on the 14th March, when the orders forming them are dated the 22d of that month: and that the persons on the Seneca turnpike road, set off to district No. 21, were not, at the time they were so set, inhabitants of district No. 6, though the order of the 22d March shows them to be so.—Much as the Superintendent is disposed to sustain the proceedings of officers engaged in the administration of the common

school system, he cannot go so far as to give jurisdiction, by such a train of assumptions, where none appears by the records to have been possessed.

But there are other considerations which it may be proper to advert to, with reference to the possible future action of the commissioners in respect to these districts. District No. 5 has, in the opinion of the Superintendent, been unjustly reduced in strength. By the statement of the respondent, it appears that the district on the 31st December, 1835, had 57 children, between 5 and 16 years of age, and that the number was by the division made to form district No. 21, reduced to 46. But there are included in this statement nine children who were set off to district No. 22, and the children of the appellant, who was left in such a condition that it did not appear satisfactorily to which district he belonged. On the other hand the statement of the appellant shows, that the number of children between 5 and 16 years of age, now residing in the district, is but 18, in addition to his own. The Superintendent is, therefore, left to infer, that between the 31st December, 1835, and the time when the appeal was made, the number of children in district No. 5 has been reduced to the extent set forth by the appellant. But admitting the number of children given by the respondent to have been the true number in the district, at the time the several dismemberments to which it was subjected were made, the district was, in this respect, reduced below the average strength of the other districts in the state, and as the result has proved, a considerable portion of the population left, was not of such a fixed character as to enable it to maintain itself.

The formation of district No. 22 was not illegal. It was created by the commissioners of common schools of the towns of Westmoreland and Vernon, and taken from districts lying wholly within those towns: but as the formation of that district was a part of the transactions under review, and as the propriety of its organization as a separate district may be, in some respects, affected by the future disposition to be made of district No. 5, the Superintendent does not deem it expedient to make any distinction between this part of the proceedings and that which relates to district No. 21; especially as no school-house has been built in district No. 22, and there are no equitable rights to be impaired.

The Superintendent regrets that a school-house has been built in district No. 21, and that it will, in case that district was illegally formed, be left on the hands of those who have constructed it: but if he had power to declare proceedings without authority to be valid, there are considerations which might render the propriety of his interposition for the protection of the trustees of district No. 21 at least doubtful. The respondent, Charles Porter,

is a trustee of the new district, as he was of No. 6, before the latter was divided, and it was principally through his influence and exertions that the new district was formed. He states in his affidavit, that the appellant, soon after his return from Albany, in the spring of 1836, informed him that he considered the proceedings of the commissioners illegal, and that he should "appeal to the Superintendent as soon as he could get time, and rip it all up." The respondent should have taken warning from this declaration, and have ascertained at least, that the proceedings were not deficient in that ground work of authority without which the Superintendent would have no power to sustain them. The utmost that can be done by him, is to authorize the commissioners to reassemble, and do what justice may seem to them to demand.

It is accordingly ordered, that the proceedings of the commissioners of common schools of the towns of Westmoreland, Vernon and Kirkland, in setting off part of school district No. 6 to school district No. 5 as aforesaid, on the 14th of March last, and the proceedings of the commissioners of the two former towns, in forming school district No. 22, on the 22d of the same month, be and they are hereby set aside; and it is hereby declared, that the proceedings of the commissioners of the two former towns, in forming school district No. 21, on the 22d of the same month, are void and of no effect: and the commissioners of the said three towns are hereby authorized, notwithstanding this decision, to make such reorganizations of districts No. 5 and 6 as they may think proper and just, subject to an appeal to the Superintendent by any person conceiving himself aggrieved.

The Inspectors of Common Schools of the town of Oysterbay, *ex parte*.

Trustees are not the judges of the qualifications required for teachers in their school districts.

Inspectors should aim to elevate the standard of education by a rigid examination of teachers.

This was an application by the inspectors of common schools of the town of Oysterbay, for the opinion of the Superintendent as to their duty in cases in which teachers not properly qualified were presented to them by the trustees of school districts with a request that the necessary certificates might be given, and with the assurance on the part of the trustees that they and the inhabitants were entirely satisfied with the teacher's qualifications.

By JOHN A. DIX, *February 11, 1837*. Neither the trustees nor the inhabitants of school districts are the judges of the qualifications of teachers. The law has confided the power

of examining teachers to the inspectors, and the object was to secure the employment of competent persons. If the trustees or inhabitants are to determine what their districts require, and inspectors are to be governed by their opinions and wishes, the office of inspector might as well be abolished. With such a practice, it is clear that the inspectors could have no influence in elevating the standard of education. A qualified teacher need only be employed three months, and it is no hardship to require a good one. In my annual report to the legislature for the year 1835, I made the following remarks, which I commend to your consideration :

“ One of the most responsible and delicate trusts to be executed under the common school system, is that of inspecting teachers and pronouncing upon their qualifications. This duty is confided to three inspectors, who are elected in each town annually, or by the three commissioners of common schools, who are also elected annually in each town, and who are, by virtue of their office, authorized to examine the schools and teachers, and give the latter certificates of qualification. If the inspection of teachers is negligently conducted, or with a willingness to overlook deficiencies instead of insisting rigidly on the requirements of the law, it is manifest that men without the necessary moral character, learning or ability, will gain a foothold in the common schools, and present a serious obstacle to the improvements of which they are susceptible. This would be an evil of the greatest magnitude, and there is no remedy for it but a strict inspection of the candidates. It has been the practice in some instances, for inspectors to have a reference to the particular circumstances of the case in giving a certificate. Thus, they have sometimes given an individual a certificate, with a view to a summer school, in which the children taught are usually smaller and require less of the teacher, when the certificate would have been withheld, if it was asked with a view to qualify the teacher for a winter school. But it is obvious that such a distinction is wholly inadmissible. A certificate must be unconditional by the terms of the law : The inspectors must be satisfied with the qualifications of the teacher, “ in respect to moral character, learning and ability : ” And the certificate, when once given, is an absolute warrant for the individual to teach for a year, and to receive the public money, unless revoked before the expiration of the year, in which case it ceases to be operative from the date of its revocation. The standard of qualification for teachers, so far as granting certificates is concerned, is of necessity arbitrary. The law does not prescribe the degree of learning or ability which a teacher shall possess, but virtually refers the decision of this important matter to the inspectors.

"By employing a qualified teacher three months in each year, every district is entitled to a distributive share of the common school fund, and its proportion of the common school tax paid by the town; and there are few instances in which the amount of the contribution from these sources will not suffice to pay him one-half of the whole amount of his compensation for the prescribed period. During the remaining nine months, the districts are at liberty to employ such teachers as they may think proper. All the law exacts is, that during one-fourth part of the year, each district which participates in the bounty of the state, shall have a teacher with whose qualifications the inspectors of the town are satisfied. The requisition is by no means onerous, and as the inspectors have not, neither should they possess, the power of relaxing the rule with reference to the circumstances of any particular case, by departing from the standard of qualification which they assume as their guide in others."

A. B., a trustee of school district No. 1 in the town of Northeast, *ex parte*.

All the trustees of a district should be present in assessing a tax; but if a tax is assessed by two, without consulting the third, the collector will be protected in executing the warrant.

If the annual report of a school district is signed by two trustees, the commissioners can look no further, and the district must receive its share of the public money if the report is otherwise sufficient.

The following question was submitted for the opinion of the Superintendent by one of the trustees of school district No. 1 in the town of Northeast:

"Are the proceedings of two trustees legal, when the third is not notified or consulted, in assessing a tax and making an annual report?"

By JOHN A. DIX, *February 16, 1837.* All the trustees of a district should be present in assessing a tax. Sec. 27, page 555, 2 R. S. provides that "whenever any power, authority or duty is confided by law to three or more persons, and whenever three or more persons or officers are authorized or required by law to perform any act, such act may be done, and such power, authority or duty may be exercised and performed by a majority of such persons or officers, upon a meeting of all the persons or officers so entrusted or empowered, unless special provision is otherwise made." The rule established by this section is applicable to officers concerned in the administration of the common school system, excepting where a different provision is made; and in relation to the assessment of taxes by trustees of school districts, no such provision exists. At the same time, if a tax is assessed by two trustees, and it is collected, the collector will be protected,

even if he should enforce the collection by taking property and selling it. If the warrant annexed to a rate bill or tax list is under the hands and seals of a majority of the trustees (sec. 88, page 484, 1 R. S.) it is sufficient for the protection of the collector; though in an action of trespass against the trustees, brought by a person whose property had been taken and sold, he might perhaps be allowed to show that two of the trustees only united in the assessment.*

The preparation of an annual report of a school district is a matter in which all the trustees ought also to unite. But I do not perceive how any advantage could be taken of them if only two were present. By a special provision of the act relating to common schools, a report signed and certified by a majority of the trustees is sufficient, (sec. 92, page 484, 1 R. S.) If this provision is complied with, and the report is in other respects sufficient, the commissioners can look no further and the district must be allowed its share of the public money. The commissioners would clearly in such a case act in strict accordance with the requirements of the law; and if a portion of the public money were awarded to a district in which a report was made out by two trustees only, without any consultation with the third, the defect could not, it appears to me, be made the ground work of any judicial proceeding against the trustees by which such report was rendered.

(ANONYMOUS.)

A teacher's certificate cannot be dated back.

By JOHN A. DIX, *February 18, 1837.* A certificate of qualification for a teacher cannot be dated back. It must bear date on the day of the examination. It will not otherwise conform to truth.

The Trustees of school district No. 4 in the town of Butternuts, *ex parte.*

Trustees of school districts have certain corporate powers conferred on them by the statute; but their jurisdiction is special and limited, and in the exercise of their powers they must confine themselves strictly to the directions of the statute.

Trustees cannot purchase promissory notes given by a teacher to third persons and set them off in payment of his wages.

This was an application from the trustees of school district No. 4 in the town of Butternuts, for the opinion of the Superin-

* According to the principle of the decision of the supreme court in the case of McCoy vs. Curtice, 9 Wendell, 19, the presence of the third trustee would be presumed until the contrary was shown.

tendent as to their right to purchase promissory notes given by a teacher to certain inhabitants of the district, to whom he was indebted, for the purpose of setting off such notes on a contract with said trustees, in payment of the wages due him for teaching.

By JOHN A. DIX, *February 24, 1837.* The question submitted to me in this case is, whether the trustees of a school district may purchase and hold a promissory note given by a teacher to a third person, and set off such note on their contract with the teacher in payment of his wages?

If trustees may purchase and hold such a note in their official character, then it would seem to follow that they may transmit it, as the property of the district, to their successors in office; and that they, or their successors, may either set it off on a contract with the maker or maintain an action on it against him for the amount due: for if it is a legal demand in their hands, the right of enforcing the payment of it against the party from whom it is due would be necessarily implied.

The question to be determined, therefore, is, whether trustees may purchase and hold a promissory note in their official character; and the settlement of this question involves a general inquiry into the nature and extent of their powers.

The revised statute relating to the common schools confers on the trustees of school districts certain specified powers. They are authorized to perform various acts concerning the school districts for which they are appointed; but they have never been considered as possessing any of the attributes of corporations, excepting such as the statute may have conferred on them in express terms. The right to purchase, hold and convey real and personal estate is one of the general powers of a corporation; and it is only by force of various successive enactments that this power has been conferred, in special cases, on the trustees of school districts. Thus, the Revised Statutes, vol. 1, sec. 97, page 485, provide that "all property now vested in the trustees of any school district, for the use of schools in the district, or which may be hereafter transferred to such trustees for that purpose, shall be held by them as a corporation." By force of this provision any property which may become vested in one set of trustees for the use of their district, passes, at the expiration of their term of office, to their successors; and either may doubtless bring an action for the purpose of maintaining the quiet and peaceable possession and enjoyment of such property; for in the power to hold property that of defending it against unlawful interference is necessarily implied.* But so far they are only authorized to hold as a corporation property vested in, or to be transferred to, them;

* See a case reported at page 168.

and there is no other provision in the statute declaring them in express terms to possess corporate powers. A declaration that they shall be a corporation for one purpose would seem to preclude the idea that the statute designed to make them so for any other purpose: and if, in other cases, corporate powers are specially conferred, they are to be regarded as exceptions to the general design of the law.

By 1 R. S. sub. 5, sec. 75, page 481, trustees of school districts are authorized to "purchase or lease a site for the district school-house, as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school-house with necessary fuel and appendages, out of the funds collected and paid to them for such purposes."

The 4th section of the act of February 17, 1831, concerning district school-houses, authorizes the inhabitants of any school district in which the site of the school-house shall have been changed as provided by the preceding sections, to direct the sale of the former lot and the buildings thereon; and a deed executed by the trustees in pursuance of such direction is declared valid and effectual to pass all the estate or interest of such district in the premises intended to be granted thereby. By the act of 11th May, 1835, the trustees of a school district are authorized, whenever the site of the school-house is lawfully changed, to sell and convey the former site, &c. These acts are designed to enable school districts to divest themselves of the title to their real estate, under certain circumstances, it having been uniformly held by the Superintendent that there was no competent authority existing within them to alien and convey such property in any case. Thus, by a train of successive enactments, the trustees of school districts have been authorized to exercise one of the general powers of corporate bodies; to hold, purchase and convey real estate, and this only in special cases.

In relation to the management of other moneyed transactions confided to trustees of school districts the statute is equally precise in its provisions. The moneys which may lawfully come into their hands for the use of their districts are those which are raised by tax upon the property of the districts, and imposed by vote of the inhabitants for certain objects enumerated in the statute, and those which are received from the commissioners of common schools or collected from the persons liable therefor, for the payment of teachers' wages. If the moneys apportioned to a district are not paid over to the trustees, they are authorized, by sec. 90, page 484, 1 R. S. to bring a suit for the recovery of the same, with interest, against the commissioner in whose hands they shall be. If the sums for which the inhabitants of the district are liable for tuition are not paid to the teacher, the

trustees are authorized, by sub. 13, sec. 75, page 482, 1 R. S. to make out a rate bill containing the name of each person so liable, and the amount for which he is so liable, &c. and to annex thereto a warrant for the collection thereof. Whenever a tax is voted, the trustees are required to make out a tax list containing the names of all the taxable inhabitants, &c. and to annex to it a warrant for its collection. If the sum payable by any person is not collected within a certain time, the trustees may renew the warrant as to such delinquent; or if he is a non-resident of the district at the time of making out the tax list or rate bill, or at the expiration of the warrant, and no goods or chattels can be found therein whereon to levy the same, the trustees may prosecute for the amount due in their name of office.

For the purpose of accomplishing the objects in view of these several provisions, the statute has conferred on trustees of school districts ample powers; and if those officers transcend the just bounds of their authority, they will have no right to complain if they lose the legal protection which would otherwise be accorded to them in the performance of their duties.

The power of bringing suits has also been conferred on them in cases other than those above enumerated, and in almost every instance authority is specially given to sue "in their name of office."

In a case which was decided in Massachusetts, 13 Mass. Rep. 193, it was held that the inhabitants of a school district had sufficient corporate powers to maintain an action on a contract to build a school-house, and to make a lease of land to them. The court said that school districts were to be considered "*as qua* corporations, with limited powers, co-extensive with the duties imposed upon them by statute or usage, but restrained from a general use of the authority which belongs to those metaphysical persons at common law. The same may be said of all the numerous corporations which have been from time to time created by various acts of the legislature, all of them enjoying the power which is expressly bestowed upon them, and perhaps in all instances where the act is silent, possessing by necessary implication the authority which is requisite to execute the purposes of their creation."

The laws of Massachusetts, under which this decision was made, relating to the division of towns into school districts, and conferring certain powers on the inhabitants, were extremely general in their provisions, and the decision was not pronounced until the court had for some time held the case under advisement, and several times consulted in relation to it, in consequence of doubts which some of them entertained. The Revised Statutes of Massachusetts, sec. 57, page 225, provide that

"every school district shall be a body corporate, so far as to prosecute and defend in all actions relating to the property of the district;" thus removing all the doubt which existed as to the extent of the powers of school districts under pre-existing laws in respect to maintaining actions at law.

The principles settled by the case in Massachusetts are perhaps in no degree inconsistent with the conclusion to which the foregoing arguments tend, with respect to school districts in this state. In Massachusetts many of the essential powers of school districts were necessarily derived by implication; from a consideration of the purposes for which they were created. In this state, on the other hand, the statute has undertaken to specify with precision the powers to be exercised by the persons charged with administering the common school system and continuing it in existence. Although the rule of construction adopted by the court in Massachusetts may be equally true in both cases, the necessity of resorting to it in order to justify the exercise of implied powers, can rarely occur in this state, for there is scarcely any object which the statute has not provided the means of accomplishing. The jurisdiction of the officers engaged in the management of the affairs of school districts is special and limited; and in the exercise of their powers they must confine themselves strictly to the directions of the statute, although the question may sometimes arise whether the exercise of a power not expressly granted by law is not indispensable to the accomplishment of some authorized object.

There is no provision in the statute by which trustees of school districts may purchase or receive promissory notes. They cannot lawfully purchase them, for the moneys which come into their hands are appropriated to specific objects, and they have no right to use those moneys, even temporarily, for any other purpose. They cannot receive and hold promissory notes for moneys due the district, for the law requires them to collect in specified modes the legal demands of their districts against individuals. To take a due bill or note of hand from an individual for money due to the district, is not only an unauthorized, but an unnecessary, step, and trustees can have no possible justification in thus transcending their powers. They have other means of enforcing the legal rights of the district, and they should not resort to practices for which the law furnishes no authority. The wages of teachers must be paid in the mode prescribed by law. If trustees purchase demands against them, it is in their individual capacity, and those demands will not be allowed to enter into their official transactions, or to be set off against the demands of the teacher upon the district. Such a right is essential to no object for which school districts were created, and if

the power of trafficking in personal securities existed, I should apprehend that serious inconveniences and abuse would grow out of it.

In the case of *Brewster vs. Colwell and others*, 13 Wendell, 28, the supreme court of this state decided that the trustees of a school district might receive for money due to them the note of a third person. This was a case, however, in which a contract had been made by the trustees for fuel, and in which they were allowed to set off in a suit brought by the person who had furnished it, a due bill given by him to a third person, and transferred to them. From the opinion expressed by the court in the cases of *Hubbard vs. Randall and others*, 1 Cowen, 262, note, and *Silver vs. Cummings and others*, 7 Wendell, 181, it would seem that trustees are personally liable on such contracts, and cannot bind their successors in office. In both the cases last referred to, the opinion of the court had reference to contracts for building school-houses; but the reasoning of the court in the case of *Silver vs. Cummings*, is equally applicable to contracts for fuel. Between such contracts, and those which are made with teachers for the payment of their wages, a distinction was taken, for reasons which were fully assigned; and the court decided that with respect to the latter, successors were liable under contracts made by their predecessors in office. The decision of the court in the case of *Brewster vs. Colwell and others*, does not, therefore, necessarily conflict with the construction which I have given to the statute; for if the trustees in that case were personally liable on their contract with *Brewster*, the due bill may have been regarded as having been purchased and held by them as individuals. If this supposition be true, it was not set off by them in their official character, but as a personal demand in extinguishment of an individual liability. The opinion of the court in this case was very brief, and was accompanied with no exposition of the grounds on which it was founded; but from the tenor of its decisions in other cases in respect to the powers of school district officers, I entertain no doubt as to the principle on which the case was decided.

Jeremiah Coons, a trustee of school district No. 18 in the town of **Broome**, *against* the inhabitants of said district.

If a tax is voted for a particular object, and the trustees expend a greater amount, they are without remedy if the inhabitants refuse to vote an additional sum to reimburse them.

The facts of the case are stated in the Superintendent's decision.

By JOHN A. DIX, *February 28, 1837.* 'This is an appeal by Jeremiah Coons, a trustee of school district No. 18 in the town of Broome, from a decision of the inhabitants of said district at a special meeting called for the purpose of raising money to pay for repairing the school-house and for other work in putting up a stove. The sum claimed by said trustee to be equitably due from the district to him is \$2.20, which the inhabitants refused to raise by tax. It appears that a tax of \$11 was voted, and has been collected, to buy a stove, and that the trustees expended in addition to that amount \$5.20 for stove pipe and work. The sum of \$3 has been raised by subscription, leaving the above mentioned balance of \$2.20.

The Superintendent of Common Schools cannot interfere in this case. If the inhabitants of the district had directed the trustees to purchase and put up a stove, without specifying the amount to be expended, or voting any tax for the purpose, he would authorize the sums reasonably expended by them in executing that direction, to be raised on the taxable property of the district, in case of a refusal on the part of the inhabitants to provide for a reimbursement of their expenditures. But as the inhabitants, by voting a tax of \$11, have in effect limited the amount of the expenditure in contemplation to that sum, the trustees were wholly unauthorized to go beyond it, and they must abide the consequences. The district may at any time vote to be raised by tax the additional sum required; but if they refuse, the trustees having acted without authority, have no remedy.

It is accordingly ordered, that the appeal of Jeremiah Coons be, and it is hereby dismissed.

The Inspectors of Common Schools of the town of Edmeston, *ex parte.*

Inspectors of common schools may give notice that they will meet at certain times and places for the inspection of teachers; but this does not exonerate them from the duty of meeting at intermediate times when their attendance is required.

This was an application for the direction of the Superintendent by the inspectors of common schools of the town of Edmeston, as to their duty with respect to meeting for the examination of teachers.

By JOHN A. DIX, *March 4, 1837.* There is no established rule as to the time when inspectors of common schools are to examine teachers. The inspectors may give a general notice that they will be present at a certain place on a certain day, and will then and there examine all such persons as may pre-

sent themselves as candidates for teaching common schools. But this will not exonerate them from the obligation of attending at other times and places, in case of urgent necessity, on application to them from the trustees of a school district or a teacher. They may, if they choose, give public notice that they will meet at some central place in the town, say, on the first Monday in January and July, and examine all persons, who intend to be candidates for teaching; and in case of applications requiring an earlier action, they may meet on the first Monday of the intermediate months of April and October. I suggest this as a convenient arrangement, and one which the inspectors may with propriety make. If such a usage were to become established in a town, so as to be a matter of general notoriety, the cases would be extremely rare which would not be disposed of at the four stated meetings of the inspectors.

The Trustees of school district No. — in the town of Willsborough, *ex parte*.

Collectors of school districts may, in certain cases, go beyond the boundaries of the districts, for which they were appointed, to execute warrants for the collection of taxes and rate bills.

The following question was presented for the opinion of the Superintendent by the trustees of school district No. — in the town of Willsborough.

The collector of our town has taxes to collect against A. B. and C. of other towns of said county. He is authorized to go into said towns and levy and sell property in their possession to satisfy such taxes. Does not the school act, by the amendment of April 21, 1831, give the same authority to collectors of school district?

By JOHN A. DIX, *March 6, 1837*. The general rule applicable to all officers is, that they cannot exercise jurisdiction beyond the limits of the district or territory for which they are appointed. The exceptions to the rule are cases in which the legislature, by special enactment, may have extended the jurisdiction of particular officers, or classes of officers, beyond those limits. The question presented by you is, whether the act of April 21, 1831, extends to collectors of school districts, the right of going beyond the boundaries of their districts for the purpose of executing a warrant for the collection of a tax for erecting or repairing a school-house? This act provides that "the warrant annexed to any tax list for the collection of a district tax for erecting or repairing any school-house, shall command the collector, in case any person named in such list shall not pay the sum therein set opposite to his name on demand, to levy the same of his goods

and chattels, in the same manner as on warrants issued by the board of supervisors to the collectors of towns." The act of April 26, 1832, provides that all taxes directed to be raised by the act relating to common schools, (title 2, of chapter 15, of part first of the Revised Statutes,) shall be collected in the manner prescribed by the act of 1831 above quoted. Whether, therefore, a tax be voted to build or repair a school-house, purchase fuel, or for any other authorized object, the manner of collecting it is the same? The act of May 11, 1835, sec. 3, provides that "the warrant issued by the trustees of school districts for the collection of rate bills shall have the like force and effect as warrants issued by the boards of supervisors to the collectors of taxes in towns; and the district collectors are hereby authorized to collect the amount due from any person or persons in their respective districts, in the same manner that the collectors are authorized to collect town and county charges."

The effect of these several amendments of the Revised Statutes is to authorize collectors of school districts to execute warrants for the collection of all taxes and rate bills, in the same manner as warrants issued by boards of supervisors to the collectors of towns.

The first question which arises under these amendments, although it is not distinctly presented by you, is, whether a collector of a school district must levy the amount due from any individual by distress and sale of the goods and chattels of such individual, or whether he may take "any goods and chattels in his possession," as collectors of towns may do, under the provisions of sec. 2, page 397, 1 R. S.? With regard to warrants issued for the collection of rate bills, there can be no doubt, as the act of May 11, 1835, expressly declares, that they shall have the like force and effect as warrants issued by the board of supervisors, &c. The act of April 21, 1831, which, with the amendment of 1832, relates to warrants issued for the collection of taxes, authorizes collectors of school districts, in case any person named in their warrants refuses to pay the amount set opposite to his name, "to levy the same of his goods and chattels in the same manner as on warrants issued by boards of supervisors," &c. At first glance, this provision would seem to restrict the collector in his levy, to the goods and chattels of the person named in the tax list, and not to authorize him to take "any goods or chattels" in the possession of such person. But by referring to sub. 5, of sec. 37, page 396, 1 R. S. it will be perceived that the warrants issued by boards of supervisors merely authorize "the collector, in case any person named in the assessment roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattels of such person." The

direction, therefore, would be the same in both cases. But under the provision of the act of April 21, 1831, which directs the levy to be made "in the same manner" as warrants issued by boards of supervisors to town collectors, it is conceived that the authority given to the latter to take "any goods and chattels in possession" of any person who ought to pay the tax, extends also to collectors of school districts. The article of which this provision is a part, professes to treat "of the manner in which taxes are to be collected, and the duties of the collector;" and from the similarity of the language adopted in the two cases, it is fair to infer that the intention was to make the provisions of this article applicable to both.*

The first question which arises under this construction of the statute, as amended, being disposed of, we come now to the inquiry presented by you, whether a collector of a school district can go beyond the boundaries of his district to execute a warrant?

Sec. 5, page 398, 1 R. S. provides that town collectors may levy and collect taxes in other wards or towns, in the same county, in two cases :

1st. When any person assessed to pay a tax shall have removed after the assessment, and before the tax ought by law to have been collected, out of the town or ward in which such tax has been assessed : and,

2d. When any person shall neglect or refuse to pay a tax assessed on any estate situated out of the ward or town in which he shall reside, and within the county.

The last case cannot occur in the assessment of taxes for school district purposes, as such taxes are to be apportioned "on all the taxable inhabitants within the district, according to the valuations of the taxable property which shall be owned or possessed by them, at the time of making out the list within the district," or "partly in such district and partly in any adjoining district." No person, therefore, can be assessed for real property excepting in the district in which it is situated ; and if he resides in a different district, he is, in certain cases, by the provisions of sec. 77 and 78, page 482, 1 R. S. to be deemed a taxable inhabitant of the district in which the property is situated.—Where school districts lie partly in two or more towns, the collector may levy on property in either town, and even in a different county, if it be within his district. But this is within the general rule, and of course not susceptible of the application of

* See the case of the trustees of school district No. 4 in the town of Butter-
nuts, page 143, and decision of supreme court, *note*, page 144.

the principles which govern either of the above mentioned exceptions.*

In the first case above stated, in which town collectors may levy and collect taxes out of their own towns and wards, and within the same county, it appears to me that the same authority is conferred on collectors of school districts, by force of the amendments of the statute above recited. With regard to rate bills, if it be not so, the warrant would not have the like force and effect as warrants issued by boards of supervisors to town collectors.

There is some difference in the phraseology of the acts of 1831 and 1835. The latter gives to warrants for the collection of rate bills "the like force and effect" as warrants issued by boards of supervisors. The former gives authority to collect of "any person named in" a tax list, in the same manner as on warrants issued by boards of supervisors; whereas, by the last clause of sec. 3, of the act of 1835, district collectors are authorized to collect "the amount due from any person or persons in their respective districts in the same manner" as town collectors. I do not consider these differences, in the language of the acts referred to, as intended to make a distinction in the two classes of cases to which they relate. The object of the amendments was the same; to give a more extensive remedy in collecting moneys for common school purposes. The act of 1831 applied to taxes for erecting or repairing school-houses. The act of 1832 designed to place all other taxes in school districts on the same footing. But a doubt having arisen whether rate bills for teachers' wages were embraced by the act of 1832, the act of 1835 was passed for the purpose of removing it.

After all, it will be perceived that there is but a single class of cases, under this construction of the acts referred to, in which the collector of a school district can go beyond the boundaries of his district to enforce the collection of a tax; that is, where an inhabitant is included in a tax list or rate bill, and removes out of the district, after the assessment and before the tax or tuition bill

* In the opinion of the Superintendent, in the case of the trustees of school district No. 1 in the town of Conewango, page 78, it would seem that collectors might go beyond the boundaries of their districts to execute warrants against the class of non-residents embraced in sections 77 and 78, though not for the collection of rate bills; and by the decision of the supreme court, in the case of *Ward vs. Aylesworth*, 9 Wendell, 281, it was settled that a collector might, where a farm was partly within an adjoining district, go on to that part of it and take property to satisfy a tax, the whole farm being considered, for that purpose, within the district of the collector. In this case the court held, that the collector was limited in his functions to the bounds of his district. But the case occurred and was tried before the amendments of 1831 and 1832 to the school act, with regard to the collection of taxes, were in force.

ought by law to have been collected. Whether the warrant be issued for the collection of a tax list or rate bill, is of no consequence. If, after the tax list or rate bill is made out, a person removes into another town in the same county, the collector may follow him and levy the amount due on any goods or chattels in his possession.

There are other cases in which a collector cannot go out of his district to collect a rate bill :

1st. Where a person, liable to be included in a rate bill, removes from the district before it is made out; and

2. Where a person, liable to be included in such rate bill, has not removed from the district after the rate bill is made out, and does not reside therein at the expiration of the warrant, and no goods or chattels can be found in the district whereon a levy can be made.

Neither of these cases comes within the scope of the amendments to the Revised Statutes, prescribing the duties of collectors, whatever may have been the intention of the framers of those amendments; for in neither case is there a removal after making out the rate bill, and before it ought by law to have been collected; nor is there in either an assessment of property situated out of the town or ward in which the owner resides, rate bills not being made out with any regard to taxable property, but according to the number of children sent to school, and the period of attendance.

In these cases, therefore, the only remedy is that provided by section 89, page 484, 1 R. S. which authorizes trustees of school districts to sue for and recover the amount due in their name of office.

The Trustees of school district No. 5 in the town of Oswegatchie, *ex parte*.

If the commissioners of common schools certify that a larger sum than \$400 is necessary to build a school-house, the excess cannot be raised by tax without a vote of the district.

If, after \$400 has been expended in erecting a school-house, and an additional sum has been raised on the certificate of the commissioners, a further sum is required, such further sum may be voted, if certified by the commissioners to be necessary.

In February, 1836, a tax of \$400 was voted in school district No. 5 in the town of Oswegatchie, to build a school-house. The whole amount was raised and expended, and was found insufficient to finish the house. An application was then made to the commissioners of common schools for a certificate, stating that in their opinion a larger sum was necessary. The commissioners gave a certificate that \$200 more was necessary, which sum

was also raised and expended. A further sum being required, another application was made to the commissioners, who expressed a willingness to give the required certificate, but doubted their authority to certify a second time. In the mean time the trustees had gone on by a vote of the inhabitants, given after six hundred dollars had been expended, and finished the house, having borrowed money on their own responsibility for the purpose.

Under these circumstances an application was made to the Superintendent for his opinion as to the right of the commissioners to certify a further sum, and as to the right of trustees to levy such additional sum without a vote of the district.

By JOHN A. DIX, *March 4, 1837*. Section 64, page 479, 1 R. S. which forbids a greater sum than \$400 to be voted for building a school-house, unless the commissioners of common schools of the town certify in writing that a larger sum ought to be raised, does not, in my opinion, authorize such additional sum to be raised without a vote of the district. Though the latter part of the section may at first glance seem to be imperative as to raising "a sum not exceeding the sum" specified by the commissioners, yet when taken in connection with the first part of the section, I think the manifest intention was, that the additional sum should be voted by the district, and that the certificate of the commissioners was designed only to enlarge the powers of the inhabitants as to voting a tax for building a school-house, and not to give the commissioners power, independently of the wishes of the district, to cause a larger sum than \$400 to be levied on its taxable property.

Under this view of the intention of the statute, I see no reason why the commissioners may not again certify that a larger sum than the amount already collected ought to be raised. On this certificate the inhabitants of the district may, at a special meeting, called for the purpose, vote the additional sum so specified. If the trustees of the district have gone on, by the direction of the inhabitants who were convened for the purpose, and incurred pecuniary responsibilities, they should be protected; and in case the inhabitants refuse, on the certificate of the commissioners, to vote a sum sufficient to reimburse the trustees for the amount reasonably expended in pursuance of such direction, I should, on application to me, take the measures necessary to save them harmless.

Horace Gay and Hester L. Stevens, *against* the trustees of school district No. 3 in the town of Gates.

If a man has been assessed on the last assessment roll of the town for a greater number of acres than his farm contains, he may claim a reduction before the trustees of a school district, when a tax is assessed for common school purposes; but if he neglects to make such claim, he will not be relieved on an appeal to the Superintendent.

This was a case in which the appellants complained that they had been unjustly taxed for $12\frac{4}{8}$ acres of land, the farm for which they were taxed being so much less than the quantity for which it was assessed in the last assessment roll of the town.

By JOHN A. DIX, *March 14, 1837.* The Superintendent of Common Schools having examined the case submitted by Horace Gay and Hester L. Stevens of the one part, and the trustees of school district No. 3 in the town of Gates on the other part, in the matter of the assessment of a tax by the latter, is of opinion that the sum of \$4.01, which the appellants state to have been assessed on lot No. 167, on account of $12\frac{4}{8}$ acres of land more than the lot contained, cannot be remitted, inasmuch as the assessment was made agreeably to the last assessment roll of the town of Gates. A reduction of the tax on account of the excess of land assessed over and above the number of acres actually contained in the lot, might have been claimed; but the Superintendent cannot interpose when the parties have neglected to resort to the remedy provided by the statute. If the reduction had been claimed before the trustees, and they had refused to correct the error, the interposition of the Superintendent might with propriety have been asked. It is not alleged that the proper application was made to the trustees for a reduction of the tax; and it is therefore presumed that no such claim was preferred.

The Trustees of school district No. — in the town of Fallsburgh, *ex parte.*

Trustees must include in a tax list every taxable inhabitant residing in the district at the time the list is made out.

Trustees cannot assess an individual for personal property, if he has been taxed for none on the last assessment roll of the town, upon the supposition that he may have more than his debts amount to.

The following questions were presented for the opinion of the Superintendent by the trustees of a school district in the town of Fallsburgh.

1. A. B. an inhabitant of our district has sold his farm to another inhabitant of the district, and intends going to the west early in the spring. He has money and obligations equal to the

amount for which he sold his farm. A tax is voted to build a school-house. What should the trustees do in relation to A. B.?

2. The town assessors have assessed C. D. for his real estate, but not for any personal property. No addition to his property has since been made. Can the trustees of the district assess him for personal property upon the supposition that he may have more than his debts amount to?

By JOHN A. DIX, *March 21, 1837*. The trustees of a school district have no discretion to exercise as to the persons to be included in a tax list. They must include every taxable inhabitant residing in the district at the time the list is made out. If a man sells his farm after the assessment roll of the town is completed, and remains in the district, he must be assessed for the price of the farm, if he is paid in money or securities for the payment of money, deducting his debts, unless they have been already deducted in the valuation of his taxable property on the town roll. In short, the trustees must give notice, and ascertain the true value of his property from the best evidence in their power, pursuant to sec. 80, page 483, 1 R. S. this being a case in which the valuation cannot be ascertained from the last assessment roll of the town.

The trustees of a district have no authority to assess an individual for more personal property than has been assessed to him on the assessment roll of the town, upon the supposition that he may have personal property exceeding the amount of his debts. The assessment roll of the town settles the matter, and the trustees cannot vary the amount, but from some knowledge of an alteration after that roll was made out, or to correct some known and acknowledged error.

The Trustees of school district No. 5 in the town of Rodman, *ex parte*.

If before a tax is assessed the trustees ascertain that the whole amount voted will not be required, they may make out a tax list for a smaller sum.

In this case a tax of \$180 was voted to build a school-house, and the dimensions of the building were agreed on. The trustees immediately entered into a contract with a builder, who agreed to construct the house for \$160. The question presented was, whether they could make out a tax list for \$160, the amount of the contract, instead of \$180, the amount voted?

By JOHN A. DIX, *April 5, 1837*. Under a vote to raise \$180 you may raise a smaller sum, if you find the whole is not required to accomplish the object of the inhabitants in voting it. No one can be injured by such a proceeding.

The Inhabitants of joint school district No. 12 in the towns of Stockbridge and Vernon, against the Commissioners of Common Schools of the latter town.

If within thirty days after proceedings complained of, notice of appeal is served and the papers transmitted to the Superintendent, it is a sufficient compliance with the regulation, and ten days will be allowed to the respondents to answer, after the service of such notice.

If there are Indian lands within the limits of a town, those lands may be included within the boundaries of school districts.

If there are, within the boundaries of a school district, Indian children whose education is provided for by special enactments, they must not be included in the annual reports of the district.

The facts of this case are stated in the Superintendent's order.

By JOHN A. DIX, *April 17, 1837.* The Superintendent of Common Schools has had under consideration the appeal of certain inhabitants of joint school district No. 12 in the towns of Stockbridge and Vernon, from the proceedings of the commissioners of common schools of the latter town on the 23d of November last, in setting off from said district so much of it as was comprised within the boundaries of the last mentioned town and forming a new district, under the denomination of district No. 15.

With respect to a preliminary objection to the hearing, raised by the respondents on account of delay in presenting the appeal, the Superintendent deems the regulations substantially complied with. In the application of these rules a liberal interpretation has always been given to their requirements. If the papers in support of an appeal are sent to the Superintendent within thirty days, and notice is served on the opposite party within the same time, it is sufficient; and ten days thereafter will be allowed to the respondent to answer. The proceedings complained of in this case were of the 23d of November, 1836. Copies of the appellants' papers were served on the commissioners of common schools of the town of Vernon on the 20th December, twenty-seven days afterwards, and the original affidavits were sent to a member of assembly at Albany, to be presented to the Superintendent. In consequence of the absence of the member referred to, the papers were not received until some time afterwards; but as they were prepared and sent to the Superintendent, and notice of the appeal was given within thirty days, it is a sufficient compliance with the regulations.

It appears that school district No. 12 was formed on the 23d of May, 1819, by the commissioners of common schools of the town of Vernon. In describing the boundaries of the district the commissioners commenced at the southwest corner of a patent granted to John Sargeant, jr. and ran the line southerly to the

south line of the town of Vernon; thence northerly on the west line of the same patent to the northwest corner of the same; and thence northerly, parallel with the east line of the Indian lands, to the centre of the Oneida turnpike road; and thence westerly to the west line of the town of Vernon. In thus describing the boundaries of district No. 12, two sides of the district, (the southern and western,) are left untouched. But the design of the commissioners is obvious, as these sides were bounded by the town line, which was the limit of their jurisdiction. They intended, beyond all doubt, to form into a separate district, under the designation of No. 12, all that part of the town of Vernon lying between Sargeant's patent on the east and the town line on the west, and between the town line on the south and the Oneida turnpike road on the north. Upon any other supposition the order would be incomprehensible and absurd.

It may be proper to observe in this place, that in an affidavit made by Messrs. Joseph Pixley, Silas Seeber and George Adams, it is alleged that "there is no road in the town of Vernon, and never has been one, known by the name of the Oneida turnpike; that the only turnpike within three miles of the said patent of John Sargeant, jr. was the Peterborough turnpike." The Superintendent is somewhat surprised that this assertion has been so positively made; for although he has no doubt the persons making the affidavit intended to state the truth, he apprehends that they are wholly in error in this respect. The Oneida Turnpike Road was established by that name, as will be seen by reference to an act passed the 31st March, 1801, before the town of Vernon was erected, and by an amendment of the charter in the year 1812, chapter 153 of the laws of that year, it appears that it still retained the name of the Oneida Turnpike Road, and that the company were authorized to change the line of their route between the school-house in Peterborough and a specified point in the town of Vernon. Subsequently to this time, until the formation of district No. 12, no act is found changing the name of the corporation, nor has the Superintendent been able to find any act establishing a turnpike road by the name of the Peterborough turnpike.

If it was the intention of the commissioners to include within district No. 12 the territory comprehended by the lines above mentioned, the question arises, whether the Indian lands which compose a part of it could be lawfully embraced in the order of the commissioners as a part of that district? On the settlement of this question the right of the commissioners of common schools of the town of Vernon to form district No. 15 must necessarily depend, as by the erection of the town of Stockbridge, district No. 12 became a joint district, if its original formation was legal,

and it could, in that case, be altered only with the assent and concurrence of the commissioners of the latter town.

To determine this question, it will be necessary to enter into a brief examination of the legislation of this state in relation to Indian lands, with a view to ascertain how far the legislature has claimed to exercise jurisdiction over them.

By art. 37 of the constitution of this state, adopted in the year 1777, it was ordained, that no purchases or contracts for the sale of lands with the Indians within the limits of this state should be deemed valid, unless made under the authority and with the consent of the legislature.

Although the avowed object of this provision was to maintain peace and amity with the Indians, and to guard against discontents and animosities growing out of frauds practised upon them in procuring contracts for the sale of their lands, the effect nevertheless was, by declaring all such contracts (unless made under the authority and with the consent of the legislature) to be void, to assume with respect to the Indian tribes, a right to control and regulate the alienation of their lands.

By an act passed the 17th March, 1788, to punish infractions of the article of the constitution above referred to, it was enacted that if any person should, without the authority and consent of the legislature, purchase any Indian lands within this state, or make contracts for the sale of such lands, he should, on conviction thereof, forfeit one hundred pounds, and be further punished by fine and imprisonment, in the discretion of the court.

It was also provided by the same act, that any person selling, intruding, or entering upon any such lands, by virtue of such contract or sale, should be subject to the like penalties.

By an act passed the 25th February, 1789, it was provided that a certain tract of land confirmed by the Oneida Indians to the Stockbridge Indians should remain to the said Stockbridge Indians, but without any power of alienation or right of leasing the same lands, or any part thereof, for a longer term than ten years.

On the 21st February, 1791, an act was passed authorizing the male Indians residing in Brothertown and New-Stockbridge, above 21 years of age, to meet together on the first Tuesday of April in each year, to choose a clerk, a marshal, and three trustees. The trustees were authorized, with the consent of the mayor of the city of Albany, to lease to any person or persons, not exceeding six hundred and forty acres, for a term not exceeding twenty-one years, for the use of the inhabitants of Brothertown and Stockbridge; the rents to be applied to the maintenance of a minister and free school for the instruction of the Indians.

By an act passed the 12th April, 1791, the provisions of the

last mentioned act were substantially re-enacted, with the exception that three peace-makers were to be chosen annually, instead of three trustees, and that some further powers were given to them, and to the Indians, for the transaction of their local concerns.

By an act passed the 31st March, 1795, commissioners were appointed to examine into and adjust differences which had arisen between the Indians of Brothertown and the white inhabitants, in consequence of leases granted to the latter by Indians in their individual capacity; and the said commissioners were authorized, after setting apart a certain piece of land for the use of the Indians, to make a division of the remainder among such persons as had obtained leases from the Indians and were actually residing on the lands, and to sell the said lands to such persons; and it was also provided that no white person should be dispossessed of any lands which he held under a lease given for ten years by the Indians in their collective capacity.

By an act passed the 23d March, 1797, the acts authorizing the Stockbridge Indians to alienate or lease any part of the tract confirmed by the Oneida Indians to them, were repealed.

By an act of the 28th February, 1804, one thousand acres of the lands of the Stockbridge Indians were directed to be leased in fee for the education of the Indian children in New-Stockbridge.

By an act of the 7th April, 1806, the superintendents of the Brothertown Indians were appointed superintendents of the Stockbridge Indians, and were authorized to sell or lease so much of their land in New-Stockbridge as would enable them to repair their mills and create a fund for the support of old and decrepit persons.

By an act passed the 3d April, 1807, the superintendents of the Brothertown Indians were authorized, under certain restrictions, to sell or lease so much of their land on the turnpike road, in one or more parcels, as they should judge convenient for keeping public houses.

By an act passed the 8th April, 1810, the sales made by the superintendent of the New-Stockbridge Indians, by virtue of the authority given to them by law, of certain lands belonging to said Indians, were ratified and confirmed.

On the 10th April, 1813, a general act was passed in relation to the different tribes and nations of Indians within this state, embodying the provisions of previous laws. The first section, among other provisions, made it penal for any person to purchase lands of any Indian residing within the state, or to enter on any lands by pretext or color of any right derived from such

purchase since the 14th of October, 1775, unless made with the consent and authority of the legislature.

By an act passed the 22d of March, 1816, the section containing the above mentioned provisions was suspended in relation to the Stockbridge Indians, so far as regards those persons, who, on or before the 1st of February, 1815, had settled on the Indian lands by virtue of leases from the Indians. The effect of this provision was to recognize the validity of the possessions acquired by white settlers, under leases granted by virtue of the acts above referred to, from 1789 to 1810.

Under the protection of the leases thus granted, the Indian lands were occupied by white settlers; and the lands being included within the boundaries of particular towns, those settlers enjoyed all the political privileges of other inhabitants of those towns.

The Indian lands within this state have, as settlement has reached them, been included within our municipal divisions like all other lands within the boundaries of the state, and as has been seen, the legislature has assumed, from the earliest times, to exercise a sovereign control over them.

The lands belonging to the Stockbridge Indians, usually known as New-Stockbridge, and now constituting the town of Stockbridge, were formerly comprised within the boundaries of the three towns of Vernon, Augusta and Lenox, lying partly in each: these lands constituted a part of those towns; and unless the laws provided otherwise, they were subject to be included in the school districts into which these towns were divided. The act for the better establishment of common schools, passed the 15th April, 1815, was in force when school district No. 12 was formed; and by the 11th section it was provided, that it should be "the duty of the commissioners of common schools, or the major part of them, to divide their respective towns into a suitable and convenient number of school districts." Under this provision, the commissioners were undoubtedly authorized to include in the school districts formed by them all the territory embraced within the boundaries of their respective towns, unless there was some special provision to the contrary, in the law from which their powers were derived. The existence of such a provision has not been alleged, and none, it is believed, has ever existed. By the 20th section of the act last referred to, the trustees of each school district were directed to include in their annual reports "the number of children residing in such district between the ages of 5 and 15 years inclusive, except Indian children, otherwise provided for by law." This provision was manifestly intended for cases in which Indian lands were included within the boundaries of school districts. Thus, in New-

Stockbridge, provision had been made for the education of the Indian children, as above shown, by reference to the act of 28th of February, 1804, and they could not, under the act of 15th of April, 1815, be included in the annual reports of the trustees of school district No. 12; but if there were on Indian lands white settlers under leases from the Indians, granted in pursuance of the authority contained in the act of 25th of February, 1789, and other subsequent acts, it would have been the duty of the trustees to include their children in their reports. If the provision of the act of 1815 was not intended for cases precisely similar to this, it would be difficult to imagine its object.

On a full review of the law applicable to the case, the Superintendent of Common Schools has no doubt that the commissioners of common schools of the town of Vernon had full power to include within the limits of district No. 12, that part of New-Stockbridge which was comprised within the boundaries of the town of Vernon; nor does he entertain the slightest doubt, that it was the intention of the commissioners to bound the district by the town lines on the south and west. If there were any cause to suppose they had a different intention, the supposition would be repelled by the fact, that the question of boundary has never before been raised, although eighteen years have elapsed since the district was formed, and by the consideration, that if the town lines were not the intended limits of the district, the order of the commissioners would be absurd on its face.

It is unnecessary for the purposes of this decision to inquire whether there were on the Stockbridge lands any white settlers within the town of Vernon. Whether there were or not, the principle is the same. Those lands were included in district No. 12, and as they have become settled by white persons, those persons are entitled to all the benefits of the common school system, equally with the inhabitants of the district residing without the Indian boundary.

This point being settled, the case is disposed of without difficulty.

By the erection of the town of Stockbridge, that part of district No. 12 which was comprised within the boundaries of the lands belonging to the Stockbridge Indians, at the time the district was formed, became a part of that town. District No. 12, therefore, became, according to a principle long since settled by the Superintendent in a like case, a joint school district, and could only be altered with the concurrence of a major part of the commissioners of common schools, of the towns of Vernon and Stockbridge. The commissioners of the former, by assuming to alter it without the concurrence of the commissioners of

the latter, have exceeded their powers, and their proceedings are void for want of authority.

It is accordingly decided, that the proceedings of the commissioners of common schools of the town of Vernon, in dividing joint school district No. 12, in Vernon and Stockbridge, are, and they are hereby declared to be, void and of no effect.

The Commissioners of Common Schools of the town of Blenheim, *ex parte*.

If a new district is formed so soon before the first of January as not to have had time to have a school kept three months by a qualified teacher, and if part of said district is taken from a district in which a school has been kept three months by a qualified teacher, and the residue from territory not belonging to any district, such new district should be allowed a share of the public money.

This was an application for the direction of the Superintendent, by the commissioners of common schools of the town of Blenheim, with regard to the propriety of including one of the school districts in said town, in the apportionment of the public moneys. The district had been formed so soon before the 1st of January preceding, as not to allow a sufficient time for keeping a school therein three months. Part of the district was taken from one of the other districts in the town, in which a school had been taught three months by a qualified teacher during the preceding year, and the residue of the new district was composed of territory which had never been included in the boundaries of any district.

By JOHN A. DIX, April 18, 1837. School districts are entitled to a share of the public money, if they have been so recently formed, previous to the 1st of January, as not to have had time to keep a school three months; and when formed subsequently to the first of January, and before the apportionment of the school moneys they are entitled to a share of those moneys, if they have been set off from districts in which schools have been taught three months by a qualified teacher, during the preceding year. The only limitation of this rule is, where a district has been formed without the consent of the trustees of the district or districts from which it is taken, and where, as the alteration cannot take effect for three months, the new district is not in operation at the time of the apportionment, so that there is no authority existing within it to receive and apply the public money. It appears to me, that there can be no difficulty in the case presented by you, if part of the new district was taken from a school district which fulfilled all the requirements of the law, and the residue is composed of territory not before annexed to any district. On every principle of equity the district should receive such share of the school moneys as the whole number of

children, between 5 and 16 years of age, residing within it, entitle it to. If any part of the district had been taken from another organized district, in which a school had not been kept three months during the previous year by a qualified teacher, that part would necessarily be excluded from the apportionment, which would be made in reference to the children residing in the other part of the new district. The reason of such exclusion is just, because if the part so excluded had continued to be a part of the district from which it was set off, it could have received none of the school moneys.

The case presented by you, is one not specially provided for by law. But as part of the new district has been taken from a district which has complied with the law, there can be no question as to the right of this part to a share of the school moneys.— And as to the other part, since it has never been attached to any district, there has been no failure to comply with the requirements of the law; and it is in respect to a failure to fulfil those requirements, where a compliance is possible, that a forfeiture is provided. You can pay over to the district the money retained in your hands.

The Trustees of school district No. 3 in the town of Ballston, *ex parte*.

Rail-road companies are taxable on their rail-ways, and other fixtures connected therewith, as real estate, in the school districts within which such real estate is situated.

This was an application from the trustees of school district No. 3 in the town of Ballston, for the advice of the Superintendent with regard to their right to include in a tax list the rail-way and fixtures of the Rensselaer and Saratoga Rail-Road Company, about a mile and a half of the rail-way of which was included in the boundaries of that district.

By JOHN A. DIX, *April 21, 1837*. By a decree of the chancellor of this state, 4th vol. Paige's Chan. Rep. 384, it has been decided that rail-road "companies, whose stock, or the principal part thereof, is vested in the lands necessary for their roads, and in their rail-ways and other fixtures connected therewith, are taxable on that portion of their capital as real estate in the several towns or wards in which such real estate is situated." They are, of course, taxable in school districts for common school purposes, on so much of such real estate as is included within the boundaries of those districts.

In the decree referred to, it was also decided, that such real estate "is to be taxed upon its actual value at the time of the assessment, whether that value is more or less than the original cost thereof."

In ascertaining the value of so much of such real estate as is included within the boundaries of a school district, the trustees must, from the necessity of the case, be guided by the best evidence which it is in their power to obtain. They should ascertain from the assessment roll of the town, the aggregate value of so much of the real estate of the company as is within the town. They should then ascertain whether the proportion of that value, in respect to the rail-way included within their district, is equal to the value of the whole of the real estate of the company included within another district in which the length of the rail-way is the same. This cannot always be the case, for within the boundaries of one school district the company will have a depot, while it has none in another district. Within one school district, the rail-way may have a double, while in another, it may have but a single, track. All these circumstances must be ascertained and taken into consideration by the trustees. If the company has in a school district nothing but its rail-way, and has a depot within the same town, then the value of the depot should be deducted from the valuation of the real estate of the company on the last assessment roll of the town, as preliminary to a valuation of that part of the rail-way which is within the boundaries of such district. I make these suggestions for your consideration, leaving it to the trustees to observe the directions contained in sec. 80, page 483, 1 R S.

The Clerk of school district No. 7 in the town of West Turin, *ex parte*.

If a special meeting is called under a notice to take into consideration the propriety of building a new school-house, and, if thought proper, to lay a tax for the purpose, it is a sufficient notice to warrant the inhabitants at such meeting to vote a tax to repair the old school-house.

In school district No. 7 in the town of West Turin, the following notice was issued by the trustees:

"To the Clerk of school district No. 7 in West Turin: We, the subscribers, trustees of said district, hereby order you to notify the taxable inhabitants of the aforesaid district, that a special school meeting will be held at the school-house in said district on the 23d day of March inst. at 6 o'clock P. M., for the purpose of taking into consideration the propriety of building a new school-house in said district, and if thought advisable at said meeting to build, then to levy a tax on the inhabitants of said district for the purpose of building. Dated at West Turin this 14th day of March, 1837.

H. JOHNSON,	}	<i>Trustees.</i> "
N. WOOD,		
F. E. TAYLOR,		

The question submitted to the Superintendent was, whether at the meeting called in pursuance to this notice, a tax could be voted to repair the old school-house.

By JOHN A. DIX, *April 24, 1837*. I am of opinion that the notice given in your district on the 14th of March for a special meeting to "take into consideration the propriety of building a new school-house in said district, and if thought advisable at said meeting to build, then to levy a tax," &c., was sufficient to justify the inhabitants to vote a tax to repair the old house. The two objects are so nearly allied that no one can complain of surprise; and it seems to be manifest that if the main object of the meeting, that of raising money to build a new school-house, should fail, the other, that of raising money to repair the old one, almost necessarily follows. If any one felt aggrieved, he should have appealed within the time limited by regulation; but as there is no appeal, the trustees may go on and levy on the taxable property of the district the sum voted.

The Commissioners of Common Schools of the town of Burton, *ex parte*.

When a town is divided and a new one formed, after the assessment of taxes has been made in the former, the school moneys levied on such town should, when collected, be divided in the same proportion as the moneys derived from the common school fund.

On the 12th of May, 1836, an act was passed dividing the town of Burton and erecting the town of Humphrey from a part of it, the first town meeting in which was to be held on the first Tuesday of March, 1837. The question presented was, in what manner the amount levied for common school purposes on the taxable property of the town of Burton in 1836, should be divided between that town and the new town of Humphrey, with a view to the apportionment to be made on the first Tuesday of April.

By JOHN A. DIX, *May 13, 1837*. The moneys levied in the town of Burton for common school purposes, previous to the time at which the act for the erection of the town of Humphrey took effect, must be divided between those towns in the same proportion in which the moneys distributed to the towns from the common school fund were apportioned by the Superintendent to the towns of Humphrey and Burton. Thus, the original town of Burton was entitled to \$40.94, of which the sum of \$18.31 was given to Humphrey, leaving to Burton the sum of \$22.63; or, for every dollar given to Humphrey, \$1.23 should be given to Burton. This is as near an approximation to a true result as can be attained.

(ANONYMOUS.)

A commissioner of common schools may be a trustee of a school district.

By JOHN A. DIX, May 19, 1837. A commissioner of common schools may be a trustee of a school district; that is, there is no legal disqualification. At the same time, it is better that no one individual should hold both offices, as questions may arise in which there may be conflicting interests to adjust between the commissioners and trustees. At all events, a proper feeling of delicacy would seem to suggest, in such a case, that the individual should resign one office or the other.

The Trustees of school district No. 4 in the town of Sharon, *ex parte*.

If the inhabitants of a school district authorize the trustees to select a site for a school-house, it is not a legal site until subsequently fixed by a vote of the inhabitants.

The inhabitants of a school district cannot authorize the trustees to borrow money.

If part of a resolution passed by the inhabitants of a school district is void, the whole resolution is vitiated.

If at an annual meeting a vote is passed in relation to the erection of a school-house or the choice of a site, and a special meeting is subsequently called under a notice to reconsider the proceedings of the annual meeting, it is a sufficient designation of the object of the meeting to justify the inhabitants in rescinding or modifying such vote.

This was an application to the Superintendent for his opinion with regard to certain proceedings in school district No. 4 in the town of Sharon. The facts of the case are stated in his opinion.

By JOHN A. DIX, May 29, 1837. On the 3d day of April last, at an annual meeting held in school district No. 4 in the town of Sharon, a vote was taken to build a stone school-house, the site to be selected by the trustees between two points designated in the resolution. It was also voted at the same time that the trustees should borrow \$125 for the purpose of procuring materials for the building.

At a subsequent day, the trustees having met to receive proposals for building, it was, on reflection, deemed advisable to call a special meeting of the inhabitants of the district for the purpose of reconsidering the former proceedings. A meeting was accordingly called on the 3d of May inst. for the purpose of taking "into consideration the propriety of reconsidering the proceedings of the annual meeting, and such other business" as the inhabitants should find necessary. Due notice was given to every inhabitant entitled to vote, and the meeting was held, four-fifths of the whole number of inhabitants being present. On

reconsidering the proceedings of the annual meeting, it was unanimously resolved that the school-house should be built of wood instead of stone, and a tax of \$250 was voted for the purpose.

The proceedings of the annual meeting in relation to building a school-house are void, for the following reasons: 1st. The inhabitants of the district must designate the site for the school-house themselves; they cannot leave the choice to the trustees or to any other persons. 2d. The inhabitants of a school district cannot authorize the trustees to borrow money. No part of the proceedings was authorized by law, excepting so much as relates to the materials of which the house was to be built. By the statement presented to me, it would appear that the vote authorizing the trustees to fix the site for the school-house was part of the same resolution which prescribed the nature of the materials to be used. The whole resolution must therefore fall, as that part of it which is void vitiates the residue; but if that part which relates to the materials could be sustained, it would make no difference, as the vote at the subsequent meeting annulled it.

The proceedings of the meeting on the 3d of May are valid. The only question which can possibly arise is, whether the notice was sufficient? On this point I entertain no doubt. The law does not prescribe that the object of a special meeting shall be stated in the notice. This duty is enjoined by the Superintendent in the directions and forms of proceedings furnished by him, and he will require in all cases that it shall be performed in good faith. The notice for the meeting on the 3d May, set forth that the object was to reconsider "the proceedings of the annual meeting." The proceedings referred to were a matter of notoriety, and it is not alleged that any one has been taken by surprise in rescinding them, so far as the school-house is directed to be built of wood instead of stone. Indeed, it is manifest from the great proportion of the inhabitants who attended the meeting, and from the unanimity which distinguished it, that the voice of the district has been fairly and clearly expressed. To attempt to overthrow the proceedings upon grounds merely technical, is, to say the least, ungracious, and can lead to no good result. But even the want of technical regularity is not shown. The notice is a substantial compliance with the forms and directions prescribed by the Superintendent; and the object of the notice, to apprise each inhabitant of the business proposed to be acted on, seems to have been fully attained. The trustees should proceed to collect the tax.

At the last meeting no vote was taken in relation to the site. As has already been stated, it must be designated by the inhabitants, although such designation need not necessarily precede

the collection of the tax. At the same time, the most unexceptionable course of proceeding in all cases, is to designate the site first, and then vote the tax to purchase it and build the school-house.

The trustees may, if they choose, examine the ground between the two points mentioned in the resolution passed on the 3d of April, but such examination can only be for the purpose of giving their advice to the inhabitants at a future meeting with regard to a proper place for a site for the district school-house. This proceeding can have no force whatever, so far as the choice of the site is concerned. To make the selection legal, the inhabitants must give a direct vote upon it, and fix the spot on which the school-house is to stand.

The Trustees of school district No. 8 in the town of Kingsbury, against the Commissioners of Common Schools of said town.

If a school district formed nine months before the first of January, is unable to procure a suitable room for keeping school, and cannot succeed in building a school-house in time to have a school kept three months by a qualified teacher, the Superintendent will, on application to him, allow such district a portion of the public moneys, if the time during which the inhabitants have contributed to the support of a school by a qualified teacher in the new district, and in the district from which it was taken, is equal to three months.

This was an appeal to the Superintendent by the trustees of school district No. 8 in the town of Kingsbury, under circumstances which are fully explained in the Superintendent's order.

By JOHN A. DIX, *May 29, 1837.* On the 28th day of March, 1836, school district No. 8 in the town of Kingsbury, was divided, and school district No. 15 was formed from a part of it. The latter district was organized by the appointment of officers on the 11th of April ensuing. On the 2d of May a site for a school-house was selected, and arrangements were soon afterwards made for building the house; but the difficulty of procuring labor and materials at that season of the year was such that the house was not completed until the last of November, in consequence of this difficulty, and the impossibility of hiring a building for a school-house, an agreement was entered into with district No. 8, and the inhabitants of No. 15 continued through the summer to send their children to the school in that district. On the 1st of December ensuing, the school-house in No. 15 being completed, a school was commenced by a qualified teacher, and continued to the end of the year. The school in No. 8, to which the inhabitants of No. 15 had sent their children during two months and a half of the summer term, was also kept by a qualified teacher, so that they had, for more than

three months, during the year 1836, and subsequently to their separation from No. 8, contributed to the support of a school kept by a qualified teacher. School district No. 8 had also, during the year 1836, a school kept by a qualified teacher for the full period of three months.

The facts above stated were substantially prescribed by the annual report of district No. 15 to the commissioners of common schools, who refused, in apportioning the school moneys for the present year, to allow any portion of them to No. 15. From this decision the trustees of district No. 15 appeal. A copy of the appeal, with the proper notice, has been served on the commissioners, and as they do not answer, the Superintendent infers that they are willing to submit the case for his decision upon the facts stated by the appellants.

By the act of April 21, 1831, where "a school district shall have been formed at such time previous to the first of January as not to have allowed a reasonable time to have kept a school therein for the term of three months," it becomes entitled to a share of the public moneys, if it is formed out of a district in which a school shall have been kept three months by a qualified teacher. School district No. 15 was formed in the month of March, 1836. It had, therefore, more than nine months before the expiration of the year for keeping such a school. This was certainly a reasonable time, and the commissioners of common schools were right in refusing to apportion to it a share of the school moneys. The only question for them to decide was, whether the district had a reasonable time before the 1st of January to keep a school three months? And this question being decided in the affirmative, they could not allow it any portion of the public money.

But there are circumstances in this case which, though they could not be taken into consideration by the commissioners for the purpose of varying the plain requirements of the law, may be properly addressed to the Superintendent, with a view to such an interposition on his part as to save, if possible, the equitable rights of the district.

The object of the provision of the act of 1831, above quoted, was to secure to districts formed at so late a period of the year as not to have afforded sufficient time to have a school kept in them by a qualified teacher for the period of three months before the first of January ensuing, on which day the annual reports of the school districts must be dated, a participation in the distribution of the school moneys to be made on the basis of those reports. With this provision was connected another which was intended to put such districts on the footing of all others in the state; that they should not receive any share of the school moneys unless

they were taken from districts in which schools had been kept three months by a qualified teacher, during the year preceding the first of January. This is a fundamental provision of the common school system, and is deemed indispensable to maintain its efficiency. As has been already seen, district No. 15 had substantially fulfilled this requirement. Not only had district No. 8, from which it was taken, supported for three months previous to the first of January a school kept by a qualified teacher, but the inhabitants of No. 15 had contributed to the maintenance of such a school for more than three months. The design of the law had, in this respect, therefore, been accomplished.

It is true that district No. 15 had a reasonable time before the first of January to have a school kept within it three months; and but for strong reasons the Superintendent would not deem himself at liberty to interpose. These reasons consist in the inability of the district to procure a proper building for keeping school while the school-house was in a course of construction, and the difficulty of procuring labor and materials to complete the house before the last of November. The inhabitants did all in their power, under the circumstances, to carry into execution the requirements of the law. They entered into an arrangement with the district from which they were taken, and provided their children, at the school in that district, with the instruction which the law enjoins. If there had been any *laches* on their part; and if they had not contributed to the support of a school kept by a qualified teacher, so as to make up the legal term of instruction, the Superintendent would not interpose. But as the inhabitants of the district have acted in good faith, and have substantially carried into effect the requirements of the law; and as they were prevented by causes not within their control from complying literally with these requirements:

It is hereby ordered, that the commissioners of common schools of the town of Kingsbury pay to the trustees of school district No. 15 in said town, out of the school moneys next to be distributed, such sum as that district would have been entitled to receive for the present year, if a school had been kept therein three months during the year 1836 by a qualified teacher.

The Trustees of school district No. — in the town of Batavia, *ex parte*.

If an inhabitant removes from a district before the end of one month after a tax is voted, and before the tax list is delivered to the collector, he cannot be included in it, the tax list not being complete until the end of the month, if it remains in the hands of the trustees.

In this case a tenant in the occupation of a farm in a school district in the town of Batavia removed from the district after a

tax was voted, but before the tax list was put into the hands of the collector; but it did not appear distinctly from the statement presented to the Superintendent, whether one month had elapsed after the tax was voted and before the tenant removed.

By JOHN A. DIX, *June 13, 1837.* If the tenant referred to in your letter was a taxable inhabitant of the district at the time the tax list was made out, he should have been included in it, and if he removed subsequently, he would be liable for the amount of the tax assessed to him. The only question is, when was the tax list made out? I think the tax list must be considered incomplete, if it remains in the hands of the trustees, until the last day of the month allowed them for making it out; and if an inhabitant removes from the district before that day he cannot be included in it. If they deliver it to the collector at the end of fifteen or twenty days, it is beyond their control, and they cannot recall it for the purpose of making alterations, though mere errors discovered after that time may be corrected. But if the tax list remains in their hands until the twenty-ninth day after the tax was voted, they may and should make it conform to the condition of the district in respect to its taxable inhabitants on that day. After the expiration of the month they can make no alteration in it, though it may not have been delivered to the collector.

The Trustees of school district No. ----- in the town of Ovid, *ex parte.*

When a new district is formed, if the commissioners of common schools neglect to issue a notice for the first district meeting, within twenty days, they may issue it at a subsequent time.

a notice is issued for the first district meeting in a new district, formed without the consent of the trustees of the district or districts from which it was taken, and the time fixed for such meeting is within three months after service of notice on such trustees of the alteration made in their districts, the notice issued for such first district meeting is void, and the commissioners may issue another at a subsequent time.

the notice for the first district meeting in a new district is not void, but merely defective in form, application may be made to the Superintendent to amend it.

This was an application for the opinion of the Superintendent in a case in which a new district had been formed in the town of Ovid, and in the organization of which a doubt had arisen as to the effect of a notice appointing the first district meeting before the expiration of three months after notice in writing to the trustees of the districts from which such new district was taken, said trustees not having consented to the alterations made in their respective districts.

By JOHN A. DIX, *June 29, 1837.* By 1 R. S. sec. 55, page 477, the commissioners of common schools are required, whenever

a school district is formed by them, to prepare a notice in writing within twenty days thereafter, describing such district and appointing a time and place for the first district meeting, and to deliver such notice to a taxable inhabitant of the district.

By I.R. S. sec. 22, page 471, it is provided that "no alteration of any school district, made without the consent of the trustees thereof, shall take effect until three months after notice in writing shall be given by the commissioners to some one or more of such trustees."

These two provisions must, if possible, be so construed that both may stand; and in this there is no difficulty. If an alteration is made in one or more existing districts, without the consent of trustees, it cannot take effect until three months after notice in writing to the trustees, &c. The formation of a new district necessarily involves an alteration of existing districts, excepting those uncommon cases in which school districts are formed out of territory previously unsettled, and for want of inhabitants not included within the boundaries of any district. In these cases the commissioners may issue their notice for the first district meeting, which may be held after the expiration of six days, if the notice is immediately served. But if a new district is formed out of territory included in existing districts, so as to alter the latter, and the trustees do not consent to such alteration, it cannot take effect until three months after notice in writing, &c. In the application of this rule the Superintendent has decided that no act touching the organization of the new district is valid if done before the expiration of the three months, so that an election before that time has expired would be void for want of authority.

Notwithstanding this decision the commissioners should issue their notice for the first district meeting within twenty days after the district is formed; but the time appointed for the meeting must be at some period subsequent to the expiration of three months after notice in writing to the trustees of the district or districts from which it is taken. It is hardly necessary to say, that if the trustees of the altered districts consent, the new district may organize immediately, in the same manner as though it had been formed out of territory not previously attached to any district.

The provisions above quoted with regard to the notice to be given by the commissioners may be violated in three modes.

1. The commissioners may neglect to issue their notice within twenty days:
2. They may issue it within twenty days, and appoint the time for the first district meeting before the expiration of three months:

3. They may issue a notice which is in some matter of form defective.

1. If the commissioners do not issue any notice within twenty days they may perform the duty at a subsequent time, as the provision of law requiring them to do it within that time is directory only; and if the duty is neglected it should be subsequently performed, so that third persons may sustain no injury. This is the general rule of law, where the authority of the officer is not intended to be limited by the specification of time, and it appears to me to be applicable to this case.

2. If the notice for the first meeting in the new district is issued within twenty days, and the time appointed for the meeting is within three months, and the trustees have not consented to the alteration, the notice is void. It appoints a day in violation of an express prohibition of the statute. It is, in contemplation of law, no notice at all; and the commissioners may issue another, precisely as though they had issued none.

3. If the notice does not on its face show a direct violation of the statute, but is defective in some matter of form, application may be made to the Superintendent for authority to amend it. Having issued an order which is not void, the commissioners cannot issue another without being empowered to do so by the proper authority; although they may doubtless rescind their order for the formation of the new district and commence anew.

APPENDIX.

L A W S

RELATING TO

COMMON SCHOOLS,

AND THE

FORMS AND REGULATIONS

PREScribed FOR THEIR GOVERNMENT.

[This edition of the Statutes relating to Common Schools, is in conformity to an edition of the Revised Statutes of the state, with the amendments thereto, recently published by the Revisers. Some of the sections have double numbers. In every such case, the last number refers to the original edition of the Revised Statutes. In the annexed Forms and Regulations, the numbers of the sections as given in the present edition are referred to; but the foregoing Decisions of the Superintendent refer to the numbers of the sections in the original edition. The Decisions also refer to the pages of the original edition of the Revised Statutes, which are shown by the figures, with asterisks annexed, on the margins of the following pages.]

L A W S

REVISED STATUTES

RELATING TO

COMMON SCHOOLS,

TITLE II. CHAPTER XV.

TITLE II.

OF COMMON SCHOOLS.

- ART. 1.—Of the powers and duties of the superintendent of common schools, and of the apportionment of school moneys.
ART. 2.—Of the distribution of the common school fund.
ART. 3.—Of the powers and duties of the commissioners of common schools.
ART. 4.—Of the inspectors of common schools.
ART. 5.—Of the formation of school districts, and of the choice, duties and powers of their officers.
ART. 6.—Of certain duties of the county clerk.

ARTICLE FIRST.

Of the Powers and duties of the Superintendent of Common Schools, and of the Apportionment of School Moneys.

- SEC. 1. Superintendent must make annual report to the legislature; contents thereof.
2. When school moneys to be apportioned.
3. How apportionment to be made.
4. How an increase apportioned.
5. How apportionment made when census defective.
6. New apportionment to be made in certain cases, and how.
7. Apportionment to be certified, and notice to be given.
8. Superintendent to prepare forms and instructions, and transmit them to officers.
9. Six first Articles of this Title to be printed and distributed.
10. Reasonable expenses of superintendent to be paid out of treasury.

§ 1. There shall continue to be a superintendent of common schools, whose duty, amongst other things, it shall be, to prepare and submit an annual report to the legislature containing,

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General duties of superintendent.

1. A statement of the condition of the common schools of the state:
2. Estimates and accounts of expenditures of the school moneys:

3. Plans for the improvement and management of the common school fund, and for the better organization of the common schools; and,

4. All such matters relating to his office, and to the common schools, as he shall deem expedient to communicate.

Apportionment.

§ 2. In every year, immediately following a year in which a census of the population of this state shall have been taken, under the authority of the state, or of the United States, the superintendent shall apportion the school moneys to be annually distributed, amongst the several counties of the state, and the share of each county, amongst its respective towns and cities.

Ratio.

§ 3. Such apportionment shall be made among the several towns and cities of the state,¹ according to the ratio of their population respectively, as compared with the population of the whole state, according to the last preceding census.

Increase.

§ 4. [Sec. 5.] If an increase of the school moneys to be distributed, shall take place in any other year, than one immediately following a census, the superintendent shall apportion such increase amongst the several counties, cities and towns, according to the ratio of the apportionment then in force.

Proceeding when census defective.

§ 5. [Sec. 6.] When the census, or returns, upon which an apportionment is to be made, shall be so far defective, in respect to any county, city, or town, as to render it impracticable for the superintendent to ascertain the share of school moneys, which ought then to be apportionment to such county, city, or town, he shall ascertain, by the best evidence in his power, the facts upon which the ratio of such apportionment shall depend, and shall make the apportionment accordingly.

When town altered.

§ 6. [Sec. 7.] Whenever, in consequence of the division of a town, or the erection of a new town, in any county, the apportionment then in force shall become unjust, as between two or more of the towns of such county, the superintendent shall make a new apportionment of the school moneys, next to be distributed amongst such towns, ascertaining by the best evidence in his power, the facts upon which the ratio of apportionment, as to such towns, shall depend.

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Certificate and notice.

§ 7. [Sec. 8.] The superintendent shall certify each apportionment made by him, to the comptroller, and shall

(1) Amendatory act of 1830, chap. 320, § 5, and by § 6 of same ch. the orig. § 4 is repealed.

give immediate notice thereof, to the clerk of each county interested therein, and to the clerk of the city and county of New-York; stating the amount of moneys apportioned to his county, and to each town and city therein, and the time when the same will be payable to the treasurer of such county, or to the chamberlain of the city of New-York.

§ 8. [Sec. 9.] The superintendent shall prepare suitable forms and regulations for making all reports, and conducting all necessary proceedings, under this Title, and shall cause the same, with such instructions as he shall deem necessary and proper, for the better organization and government of common schools, to be transmitted to the officers required to execute the provisions of this Title throughout the state. Regulations, &c.

§ 9. [Sec. 10.] He shall cause so many copies of the first six Articles of this Title, with the forms, regulations and instructions prepared by him, thereto annexed, to be, from time to time, printed and distributed amongst the several school districts of the state, as he shall deem the public good to require. Certain articles to be printed.

§ 10. [Sec. 11.] All moneys reasonably expended by him, in the execution of his duties, shall, upon due proof, be allowed to him by the comptroller, and be paid out of the treasury. Expenses how paid.

ARTICLE SECOND.

Of the distribution of the Common School Fund.

Sec. 11. When school moneys to be paid; how; to whom.

12. To be applied for as soon as payable.

13. County treasurer to give notice to commissioners of common schools.

14. Duty of treasurer if moneys are not applied for.

15. Duty of clerk of county on receiving notice of apportionment.

16. A sum equal to that apportioned, to be raised in each town.

17. To be paid to commissioners of common schools.

18. If no commissioners, to be paid to treasurer.

§ 11. [Sec. 12.] The sum annually to be distributed for the encouragement of common schools, shall be paid on the first day of February, in every year, on the warrant of the comptroller, to the treasurers of the several counties, and the chamberlain of the city of New-York. When paid.

§ 12. [Sec. 13.] The treasurer of each county, and the chamberlain of the city of New-York, shall apply for and receive the school moneys apportioned to their respective counties, as soon as the same become payable. Treasurer to apply.

*§ 13. [Sec. 14.] Each treasurer receiving such moneys, shall give notice, in writing, to some one or more of the commissioners of common schools of each town * 469 To give notice.

or city in his county, of the amount apportioned to such town or city, and shall hold the same subject to the order of such commissioners.

Moneys remaining how disposed of.

§ 14. [Sec. 15.] In case the commissioners of any such city or town shall not apply for and receive such moneys, or in case there are no commissioners appointed in the same, before the next receipt of moneys apportioned to the county, the moneys so remaining with the treasurer shall be retained by him, and be added to the moneys next received by him for distribution from the superintendent of common schools, and be distributed therewith, and in the same proportion.

County clerk.

§ 15. [Sec. 16.] Whenever the clerk of any county shall receive from the superintendent of common schools notice of the apportionment of moneys to be distributed in the county, he shall file the same in his office, and transmit a certified copy thereof to the county treasurer, and to the clerk of the board of supervisors of the county; and the clerk of the board of supervisors shall lay such copy before the supervisors at their next meeting.

Duty of board of supervisors.

§ 16. [Sec. 17.] It shall be the duty of the supervisors, at such meeting, and at every annual meeting thereafter, to add to the sums of money to be raised on each of the towns of the county, for defraying the necessary expenses thereof, a sum equal to the school moneys which shall have been apportioned to such town; which moneys, so added, together with the fees of the collector, shall be levied and collected in the same manner as other moneys directed to be raised in the town.

15.

§ 17. [Sec. 18.] The supervisors shall cause and require the collector of each town, by their warrant to him, to pay the moneys so added, when collected, retaining his fees for collection, to some one or more of the commissioners of common schools in such town, for the use of common schools therein; whose receipt therefor shall be sufficient evidence of such payment.

When moneys to be paid to treasurer.

§ 18. [Sec. 19.] If there shall not be any commissioners of common schools in such town when the moneys are collected, the collector shall pay the same, retaining his fees for collection, to the county treasurer, to be by him apportioned among the several cities and towns in the county, and distributed in the manner provided in the fifteenth [14th] section of this Title.

* ARTICLE THIRD.

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Of the Powers and Duties of the Commissioners of Common Schools.

- SEC. 19. Enumeration of certain duties of the commissioners.
20. Commissioners when to form and alter districts; in two or more towns.
21. When to take effect, if trustees do not consent.
- 22, 23 & 24. In what cases apportionment of school moneys not to be made.
- 25 & 26. In what cases commissioners to make new apportionment.
27. What commissioners to do with moneys remaining in their hands, in certain cases.
28. Moneys remaining two years, in certain cases, to be returned to treasurer.
29. Commissioners to make annual report to county clerk; contents.
30. If report not made, county clerk to give notice to clerk of town.
31. Commissioners to forfeit \$10; moneys for next year may be withheld.
32. If moneys lost to town, commissioners to forfeit full amount.
33. Supervisor of town to prosecute.
34. Commissioners to keep account of moneys; to whom submitted.
35. Must give account of moneys to successors; to be filed.
36. If balance remain, it must be paid forthwith.
37. If balance appropriated, it must be stated and paid accordingly.
38. For breach of any provision of three last sections, penalty of \$100.
39. Successors to prosecute for forfeiture.
40. Successors may bring suit for unpaid balance.
41. If commissioner dead, suit may be brought against his representatives.
42. Commissioners have powers of a corporation to certain extent.
43. Town clerk, clerk of commissioners; his duty.

§ 19. [Sec. 20.] It shall be the duty of the commissioners of common schools, in each town, Duties of commissioners.

1. To divide their town into a convenient number of school districts, and to regulate and alter such districts as hereinafter provided:

2. To set off by itself any neighborhood in their town adjoining to any other state of this Union, where it has been usual, or shall be found convenient for such neighborhood to send their children to a school in such adjoining state:

3. To describe and number the school districts, and to deliver the description and numbers thereof, in writing, to the town clerk, immediately after the formation or alteration thereof:

4. To deliver to such town clerk a description of each neighborhood, adjoining to any other state, set off by itself:

5. To apply for and receive from the county treasurer, all moneys apportioned for the use of common schools in their town, and from the collector of the town, all moneys raised therein for the same purpose, as soon as such moneys shall become payable, or be collected.

6. To apportion the school moneys received by them, on the first Tuesday of April, in each year, among the

several school districts, parts of districts, and neighborhoods separately set off, within their town, in proportion to the number of children residing in each, over the age of five, and under that of sixteen years, as the same shall have appeared from the last annual reports of their respective trustees :

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7. If the commissioners shall have received the school moneys of their town, and all the reports from the several school districts therein, before the first Tuesday of April, they shall apportion such moneys *as above directed, within ten days, after receiving all of the said reports and the said moneys :

8. To sue for and collect, by their name of office, all penalties and forfeitures imposed in this Title, and in respect to which no other provision is made, which shall be incurred by any officer or inhabitant of their town : and after deducting their costs and expenses, to add the sums recovered, to the school moneys received by them, to be apportioned and paid in the same manner.¹

[See Chap.
II, Part I,
Title 6.]

Districts
from several
towns.

§ 20. [Sec. 21.] Whenever it may be necessary or convenient, to form a district out of two or more adjoining towns, the commissioners from each of such adjoining towns, or the major part of them, may form, regulate and alter such district.

Consent of
trustees.

§ 21. [Sec. 22.] No alteration of any school district, made without the consent of the trustees thereof, shall take effect until three months after notice, in writing, shall be given by the commissioners, to some one or more of such trustees.

When mo-
neys with-
held.

§ 22. [Sec. 23.] In making the apportionment of moneys among the several school districts, no share shall be allotted to any district, part of a district, or separate neighborhood, from which no sufficient annual report shall have been received, for the year ending on the last day of December, immediately preceding the apportionment.

Ib.

§ 23. [Sec. 24.] No moneys shall be apportioned and paid to any district or part of a district, unless it shall appear by such report, that a school had been kept therein for at least three months, during the year ending at the date of such report, by a qualified teacher ; and that all moneys received from the commissioners during that year, have been applied to the payment of the compensation of such teacher.

(1) Laws of 1879, p. 192, and p. 194, § 12 to 15. By laws of 1889, chap. 287, the commissioners are also to take charge of the "Common School Fund" of their town, created by a vote appropriating surplus poor moneys. See Chap. 11, Part I, Title 6, for this act.

§ 24. [Sec. 25.] No part of such moneys shall be apportioned or paid to any separate neighborhood, unless it shall appear from the report of its trustee, that all moneys received by him from the commissioners, during the year ending at the date of such report, have been faithfully applied, in paying for the instruction of children residing in such neighborhood.

When moneys withheld.

§ 25. [Sec. 26.] If after the annual reports of the districts shall have been received, and before the apportionment of the school moneys shall have been made by the commissioners, a district shall be duly altered, or a new district be formed in the town, so as to render an apportionment founded solely on the annual reports, unjust, as between two or more districts of the town, the commissioners shall make an apportionment among such districts, according to the number of children in each, over the age of five and under sixteen years, ascertaining that number by the best evidence in their power.

Apportionment to district altered after annual report.

§ 26. The provisions of the twenty-sixth section of Article third, Title second of Chapter fifteen of the First Part of the Revised Statutes, are hereby extended to all cases where a school district shall have been formed at such time previous to the first day of January, as not to have allowed a reasonable time to have kept a school therein for the term of three months, such district having been formed out of a district or districts in which a school shall have been kept for three months, by a teacher duly qualified, during the year preceding the first day of January.¹

Last section extended to other cases.

§ 27. All moneys apportioned by the commissioners, to the trustees of a district, part of a district, or separate neighborhood, which shall have remained in the hands of the commissioners for one year after such apportionment, by reason of the trustees neglecting or refusing to receive the same, shall be added to the moneys next thereafter to be apportioned by the commissioners, and shall be apportioned and paid therewith, in the same manner.

§ 472 Moneys one year in hands of commissioners.

§ 28. In case any school moneys received by the commissioners, can not be apportioned by them, for the term of two years, after the same are received, by reason of the non-compliance of all the school districts in their town with the provisions of this Title, such moneys shall be returned by them to the county treasurer, to be by him apportioned and distributed, together and in the

When returned to treasurer.

(1) Laws 1831, chap. 206, § 1.

same manner with the moneys next thereafter to be received by him, for the use of common schools.

Annual report of commissioners.

§ 29. It shall be the duty of the commissioners in each town, between the first day of July and the first day of August¹ in each year, to make and transmit to the county clerk, a report in writing, bearing date on the first day of July, in the year of its transmission, and stating,

1. The whole number of school districts and neighborhoods, separately set off within their town :

2. The districts, parts of districts, and neighborhoods, from which reports shall have been made to the commissioners, or their immediate predecessors in office, within the time limited for that purpose :

3. The length of time a school shall have been kept in each of such districts or parts of districts, distinguishing what portion of that time, the school shall have been kept by qualified teachers.

4. The amount of public moneys received in each of such districts, parts of districts and neighborhoods :

5. The number of children taught in each, and the number of children over the age of five and under sixteen years, residing in each :

6. The whole amount of moneys received by the commissioners, or their predecessors in office, during the year ending at the date of their report, and since the date of their last preceding report ; distinguishing the amount received from the county treasurer, from the town collector, and from any other and what source :

7. The manner in which such moneys have been expended, and whether any, and what part remains unexpended, and for what cause.

County clerk to give notice.

§ 30. In case the commissioners in any town shall not, on or before the first day of August,¹ in any year, make such report to the clerk of the county, it shall be his duty to give immediate notice of such neglect to the clerk of such town.

* 472
Forfeiture :
money may
be withheld.

§ 31. The commissioners neglecting to make such report within the limited period, shall forfeit severally, to their town, for the use of the common schools therein, the sum of ten dollars ; and the share of school moneys apportioned to such town for the ensuing year, may, in the discretion of the superintendent of common schools, be withheld, and be distributed among the other towns in the same county, from which the necessary reports shall have been received.

(1) August inserted by § 1 of chap. 308, laws of 1835.

§ 32. When the share of school moneys apportioned to a town, shall thus be lost to the town, by the neglect of its commissioners, the commissioners guilty of such neglect, shall forfeit to their town the full amount, with interest, of the moneys so lost; and for the payment of such forfeiture they shall be jointly and severally liable.

And commissioners liable for amount.

§ 33. It shall be the duty of the supervisor of the town, upon notice of such loss, from the superintendent of common schools or county treasurer, to prosecute without delay, in the name of the town, for such forfeiture, and the moneys recovered, shall be distributed and paid by such supervisor to the several districts, parts of districts, or separate neighborhoods of the town, in the same manner as it would have been the duty of the commissioners to have distributed and paid them, if received from the county treasurer.

Supervisors to prosecute &c.

§ 34. The commissioners in each town, shall keep a just and true account of all school moneys received and expended by them during the year for which they shall have been chosen, and shall lay the same before the board of auditors of the accounts of other town officers at the annual meeting of such board in the same year.

Commissioners to keep account.

§ 35. The commissioners of common schools in each town, shall, within fifteen days after the termination of their respective offices, render to their successors in office, a just and true account, in writing, of all school moneys by them respectively received, before the time of rendering such account, and of the manner in which the same shall have been appropriated and expended by them; and the account so rendered shall be delivered by such successors in office to the town clerk, to be filed and recorded in his office.

And render to successors.

§ 36. If, on rendering such account, any balance shall be found remaining in the hands of the commissioners, or any of them, the same shall immediately be paid by him or them, to his or their successors in office, or some one of them.

And pay balance.

§ 37. If such balance, or any part thereof, shall have been appropriated by the commissioners to any particular school district, part of a district, or separate neighborhood, and shall remain in their hands for the use thereof, a statement of such appropriation shall be made in the account so to be rendered, and the balance paid to such successors in office, shall be paid over by them, according to such appropriation.

If appropriated, to be paid accordingly.

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§ 38. Every commissioner of common schools, who

Forfeiture for neglect.

shall refuse or neglect to render such an account as is above required, or who shall refuse or neglect to pay over to his successors in office, any balance so found in his hands, or to deliver a statement of the appropriation, if any there be, of such balance, shall for each offence, forfeit the sum of one hundred dollars.

Successors
to prosecute.

§ 39. It shall be the duty of such successors in office, to prosecute without delay, in their name of office, for the recovery of such forfeiture, and to distribute and pay the moneys recovered, in the same manner as other school moneys received by them.

Suit how
brought.

§ 40. Such successors in office may bring a suit in their name of office, for the recovery, with interest, of any unpaid balance of school moneys, that shall appear to have been in the hands of any previous commissioner on leaving his office, either by the accounts rendered by such commissioner, or by other sufficient proof.

No.

§ 41. In case of the death of such commissioner, such suit may be brought against his representatives, and all moneys recovered shall be applied in the same manner as if they had been paid over without suit.

Corporation.

§ 42. The commissioners of common schools in each town, shall have the powers and privileges of a corporation, so far as to enable them to take and hold any property transferred to them for the use of common schools in such town.

Clerk of
commis-
sioners;
his duty.

§ 43. The town clerk, by right of office, shall be the clerk of the commissioners of common schools in each town, and it shall be his duty,

1. To receive and keep all reports made to the commissioners from the trustees of school districts, and all the books and papers belonging to the commissioners, and to file them in his office:

2. To attend all meetings of the commissioners, and to prepare, under their direction, all their reports, estimates and apportionments of school money, and to record the same and their other proceedings, in a book to be kept for that purpose:

3. To receive all such communications as may be directed to him by the superintendent of common schools, and to dispose of the same in the manner directed therein:

4. To transmit to the clerk of the county, all such reports as may be made for such clerk, by the commissioners:

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*5. To call together the commissioners, upon receiv-

ing notice from the county clerk that they have not made their annual report, for the purpose of making such report :

And generally to do and execute all such things as belong to his office, and may be required of him by the commissioners.

ARTICLE FOURTH.

Of the Inspectors of Common Schools.

- Szc. 44. Who inspectors of common schools in each town.
 45. To examine persons offering themselves as teachers.
 46. Qualifications to be required.
 47. If satisfied, to give certificate.
 48. May annul certificate after ten days' notice.
 49. May require re-examination.
 50. How effect given to the annulling of a certificate.
 51. In certain cases, inspectors of two or more towns may examine.
 52. Inspectors to visit schools at least once a year.
 53. Duties at such visitation.
 54. Each inspector may have assigned to him certain districts.

§ 44. The commissioners of common schools in each town, together with the other inspectors elected in their town, shall be the inspectors of common schools for their town. Who inspectors.

§ 45. It shall be the duty of the inspectors of common schools in each town, or any three of them, at a meeting of the inspectors called for that purpose, to examine all persons offering themselves, as candidates for teaching common schools in such town. Their duty, as to teachers.

§ 46. In making such examination, it shall be the duty of the inspectors to ascertain the qualifications of the candidate, in respect to moral character, learning and ability. ib.

§ 47. If the inspectors shall be satisfied in respect to the qualifications of the candidate, they shall deliver to the person so examined, a certificate signed by them, in such form as shall be prescribed by the superintendent of common schools. ib.

§ 48. The inspectors, or any three of them, may annul any such certificate given by them or their predecessors in office, when they shall think proper, giving at least ten days' previous notice in writing to the teacher holding it, and to the trustees of the district in which he may be employed, of their intention to annul the same. ib.

§ 49. The inspectors, whenever they shall deem it necessary, may require a re-examination of all or any of the teachers in their towns, for the purpose of ascertaining their qualifications to continue as such teachers. ib.

§ 50. The annulling of a certificate shall not disquali- ib.

* 476 fy the teacher to whom it was given, until a note in writing thereof, containing the "name of the teacher, and the time when his certificate was annulled, shall be made by the inspectors, and filed in the office of the clerk of their town.

a. § 51. Where any school district shall be composed of a part of two or more towns, or any school-house shall stand on the division line of any two towns, the inspectors of either town may examine into and certify the qualifications of any teacher, offering to teach in such district, in the same manner as is provided by the preceding sections of this Article; and may also in the same manner annul the certificate of such teacher.

Wb. as to visiting schools.

§ 52. It shall be the duty of the inspectors to visit all such common schools, within their town as shall be organized according to law, at least once a year, and oftener if they shall deem it necessary.

Wb.

§ 53. At such visitation, the inspectors shall examine into the state and condition of such schools, both as respects the progress of the scholars in learning, and the good order of the schools; and may give their advice and direction to the trustees and teachers of such schools as to the government thereof, and the course of studies to be pursued therein.

Wb.

§ 54. Each of the inspectors, by agreement with, or direction of, the other inspectors, may be assigned to a certain number of school districts, which it shall be his special duty to visit and inspect.

ARTICLE FIFTH.

Of the Formation of School Districts, and of the Choice, Duties and Powers of their Officers.

Sac. 55. Duty of commissioners when district formed; notice to be given.

56. Manner of serving notice.

57. In certain cases, notice to be renewed.

58. For not serving notice, forfeiture \$5.

59. When meeting called, duty of inhabitants to assemble.

60. Qualifications of voters; fine for voting without right.

61. Powers of meeting.

62 to 65. To raise money to purchase district libraries; annually to make additions; who librarian; taxes how collected.

66. Annual meetings, how and when to be appointed.

67. Special meetings how called, effect of want of notice.

68. Amount to be raised for building, &c. school-house, limited.

69. Altering school districts formed from several towns.

70 & 71. Sites of school-houses how and when altered, votes how to be taken.

72. Notices of district meetings to alter sites, to specify objects.

73. Sale of former site on change being made; security for purchase.

74. Money how appropriated.

75 & 76. Trustees may sell former site when changed; proceeds how applied.

77. In dividing districts, proportion due new district to be ascertained.

SEC. 78. Proportion how ascertained; and deduction for debts of former district.

79. Amount of such proportion, how collected and applied.

80. Duration of office of district officers.

81. Vacancies in such offices, how filled.

82. Penalty for refusing to serve after appointment, and for neglecting without refusing.

83. Persons chosen may resign, and in what manner.

84. Duty of clerk of district.

85. Duty and powers of trustees.

86. Among whom tax to be apportioned, and upon what to be assessed.

*87. Persons owning lands occupied by agents, considered taxable inhabitants. # 477

88. Improved land unoccupied, liable to taxation, though owner reside out of district.

89 & 90. Valuations of taxable property, how ascertained and when reduced.

91. Who exempted from taxation to build a school-house.

92. Trustees to assess district tax, and make out list thereof.

93. When tenant may charge tax paid by him, to owner of the land.

94. Where fuel for school is not provided by tax, who to furnish the same.

95. Trustees to determine the proportion to be provided by each person.

96 & 97. If any person omit, trustees to furnish; how collected.

98 to 101. Collector's warrant, and his duty under it; taxes and rate bills how collected.

102. When trustees to renew warrant; and when to collect tax by suit.

103. Moneys apportioned to a district if unpaid; how to be recovered and applied.

104. Trustees of district to report; when and to whom.

105 & 106. To whom report to be delivered, and what to specify; not to contain paupers.

107. Who to be deemed qualified teachers.

108. When a district is formed of two or more towns, trustees to whom to report.

109. Trustee of separate neighborhood, how chosen; when and to whom to report.

110. Penalty on trustees for signing a false report.

111. Property vested in trustees, held by them as a corporation.

112 & 113. At expiration of office, trustees to account; balance how paid.

114. Penalty for refusing, &c. to account.

115. Who to prosecute for same, and how applied.

116. Remedy for recovering balance from a former trustee; who to sue for it.

117. Bonds, &c. taken by trustees, to be delivered to their successors.

118. Fees of collector of district.

119. To pay to trustees moneys collected, and when.

120. When required by them, to give bond to trustees; its conditions.

121. If he do not execute bond, office to be vacated.

122. If money lost by his neglect, what he shall forfeit.

123. Who to sue for such forfeiture, and for balances remaining in his hands.

124. Appeal to superintendent of common schools.

§ 55. Whenever any school district shall be formed in any town by the commissioners of common schools, it shall be the duty of some one or more of the commissioners, within twenty days thereafter, to prepare a notice in writing, describing such district, and appointing a time and place for the first district meeting, and to deliver such notice to a taxable inhabitant of the district. Commissioners to give notice.

Notice for
first meeting

§ 56. It shall be the duty of such inhabitant to notify every other inhabitant of the district, qualified to vote at district meetings, by reading the notice in the hearing of each such inhabitant, or in case of his absence from home, by leaving a copy thereof, or of so much thereof as relates to the time and place of such meeting, at the place of his abode, at least six days before the time of the meeting.

When to be
renewed.

§ 57. In case such notice shall not be given, or the inhabitants of a district shall refuse or neglect to assemble, or form a district meeting, when so notified; or in case any such district, having been formed and organized in pursuance of such notice, shall afterwards be dissolved, so that no competent authority shall exist therein, to call a special district meeting in the manner hereinafter provided; such notice shall be renewed by the commissioners, and served in the manner above prescribed.

* 478
Penalty for
not serving
notice.

§ 58. Every taxable inhabitant to whom a notice of a district meeting shall have been properly delivered for service, who shall refuse or neglect to serve the notice in the manner above in this Article enjoined, shall for every such offence forfeit the sum of five dollars.

Inhabitants
when to as-
semble.

§ 59. Whenever any district meeting shall be called, in the manner prescribed in the preceding sections of this Article, it shall be the duty of the inhabitants of the district, qualified to vote at district meetings, to assemble together at the time and place mentioned in the notice.

Qualification
of voters.

§ 60. No person shall vote at any school district meeting, unless he shall be a freeholder in the town where he votes or shall have been assessed the same year in which he votes, or the preceding year, to pay taxes therein; or shall possess personal property over and above such as is exempt from execution, to the amount of fifty dollars, liable to taxation in the district; and every person not so qualified, who shall vote at any such meeting, shall for each offence forfeit the sum of ten dollars.

Powers of
district
meeting.

§ 61. The inhabitants so entitled to vote, when so assembled in such district meeting, or when lawfully assembled at any other district meeting, shall have power, by a majority of the votes of those present,

1. To appoint a moderator for the time being;
2. To adjourn from time to time, as occasion may require;

3. To choose a district clerk, three trustees, and one district collector, at their first meeting, and as often as such offices, or either of them, become vacated:

4. To designate a site for a district school-house :

5. To lay such tax on the taxable inhabitants of the district as the meeting shall deem sufficient to purchase or lease a suitable site for a school-house, and to build, hire, or purchase such school-house, and to keep in repair and furnish the same with necessary fuel and appendages :

6. To repeal, alter, and modify their proceedings from time to time, as occasion may require.

§ 62. The taxable inhabitants of each school district in the state shall have power, when lawfully assembled at any district meeting, to lay a tax on the district, not exceeding twenty dollars for the first year, for the purchase of a district library, consisting of such books as they shall in their district meeting direct, and such further sum as they may deem necessary for the purchase of a book case. The intention to propose such tax shall be stated in the notice required to be given for such meeting.¹

To raise money to purchase district library.

§ 63. The taxable inhabitants of each school district shall also have power when so assembled in any subsequent year, to lay a tax not exceeding ten dollars in any one year, for the purpose of making additions to the district library.¹

lib. to make additions.

§ 64. The clerk of the district, or such other person as the taxable inhabitants may at their annual meeting designate and appoint by a majority of votes, shall be the librarian of the district, and shall have the care and custody of the library, under such regulations as the inhabitants may adopt for his government.¹

Librarian.

§ 65. The taxes authorized by this act to be raised, shall be assessed and collected in the same manner as a tax for building a school-house.¹

Taxes how raised.

§ 66. [Sec. 62.] In each school district an annual meeting shall be held at the time and place previously appointed ; and at the first district meeting, and at each annual meeting, the time and place of holding the next annual meeting shall be fixed.

Annual meeting.

§ 67. [Sec. 63.] A special meeting shall be held in each district whenever called by the trustees ; and the proceedings of no district meeting, annual or special, shall be held illegal, for want of a due notice to all the persons qualified to vote thereat, unless it shall appear

special meeting.

that the omission to give such notice was wilful and fraudulent.

* 479
Limitation of
tax.

*§ 68. [Sec. 64.] No tax to be voted by a district meeting for building, hiring or purchasing a school-house shall exceed the sum of four hundred dollars, unless the commissioners of common schools of the town in which the school-house is to be situated, shall certify in writing, their opinion that a larger sum ought to be raised, and shall specify the sum; in which case, a sum not exceeding the sum so specified, shall be raised.

Joint meet-
ing of com-
missioners.

§ 69. [Sec. 65.] If the commissioners of common schools in any town, shall require in writing, the attendance of the commissioners of any other town or towns, at a joint meeting for the purpose of altering a school district formed from their respective towns, and a major part of the commissioners notified shall refuse or neglect to attend, the commissioners attending, by a majority of votes, may call a special district meeting of such district, for the purpose of deciding on such proposed alteration; and the decision of such meeting shall be as valid as if made by the commissioners of all the towns interested, but shall extend no further than to dissolve the district formed from such towns.

Miles of
school-hou-
ses, when
and how
altered.

§ 70. Whenever a school-house shall have been built or purchased for a district, the site of such school-house shall not be changed, nor the building thereon be removed, as long as the district shall remain unaltered, unless by the consent, in writing, of the commissioners of common schools, or a majority of them, of the town or towns within which such district shall be situated, stating that in their opinion such removal is necessary; nor then, unless two-thirds of all those present at a special meeting of such district, called for that purpose, and qualified to vote therein, shall vote for such removal and in favor of such new site.¹

Votes how
taken.

§ 71. Such vote shall be taken by ayes and noes, and the name of each voter, with the vote that he shall give, shall be entered by the clerk in the records of such school district.¹

Contents of
notice.

§ 72. Every notice of a district meeting called in pursuance of this act shall state the purpose for which such meeting is called.¹

State of for-
mer site.

§ 73. Whenever the site of a school-house shall have been changed as herein provided, the inhabitants of the

(1) Laws of 1831, chap. 44, and orig. § 66 repealed.

district entitled to vote, lawfully assembled at any district meeting, shall have power, by a majority of the votes of those present, to direct the sale of the former site or lot, and the buildings thereon, and appurtenances, or any part thereof, at such price and upon such terms as they shall deem most advantageous to the district; and any deed duly executed by the trustees of such district, or a majority of them, in pursuance of such direction, shall be valid and effectual to pass all the estate or interest of such school district in the premises intended to be conveyed thereby, to the grantee named in such deed; and when a credit shall be directed to be given upon such sale, for the consideration money, or any part thereof, the trustees are hereby authorized to take, in their corporate name, such security by bond and mortgage, or otherwise, for the payment thereof, as they shall deem best, and shall hold the same as a corporation, and account therefor to their successors in office and to the district, in the manner they are now required by law to account for moneys received by them; and the trustees of any such district for the time being, may, in their name of office, sue for and recover the moneys due and unpaid upon any security so taken by them or their predecessors in office, with interests and costs.¹

Deeds therefor.

Security for purchase how taken.

§ 74. All moneys arising from any sale made in pursuance of the last preceding section, shall be appropriated to the payment of the expenses incurred in procuring a new site and in removing or erecting a school-house, or either of them, so far as such application thereof shall be necessary.¹

Avails to be applied to new site, &c.

§ 75. Whenever the site of the school-house in any school district in this state shall have been legally changed, the trustees of such district shall have power to sell and convey the former site, and the building or buildings thereon, upon such terms as they shall deem advantageous to the district.²

Trustees may sell site.

§ 76. The proceeds arising from any sale made in pursuance of the preceding section, shall be appropriated to the payment of expenses incurred in procuring a new site, and in removing or erecting a building or buildings thereon; so far as such appropriation shall be necessary.³

Proceeds how to be appropriated

§ 77. [Sec. 67.] When a new district shall be formed from one or more districts, possessed of a school-house;

Altering district, how school-

(1) Laws of 1831, chap. 44. (2) *Ib.* 1835, chap. 308, § 4 and 5.

house, &c.
disposed of.

and in cases where any district from which such new district shall be in whole or in part formed, shall be entitled to other property than its school-house, then the commissioners of common schools, at the time of forming such new district, shall ascertain and determine the amount justly due to such new district, from any district out of which it may have been in whole or in part formed, as the proportion of such new district of the value of the school-house and other property belonging to the former district, at the time of such division.

Proportion
how ascer-
tained.

§ 78. [Sec. 68.] Such proportion shall be ascertained, according to the taxable property of the inhabitants of the respective parts of such former district, at the time of the division, by the best evidence in the power of the commissioners; and deduction shall be made therein for any debts due from the former district.

How levied
and applied.

§ 79. [Sec. 69.] Such proportion, when ascertained, shall be levied, raised and collected, with the fees for collection, by the trustees of the district retaining the school-house or other property of the former district, upon the taxable inhabitants of their district in the same manner* as if the same had been authorized by a vote of their district for the building of a school-house; and when collected, shall be paid to the trustees of the new district, to be applied by them towards procuring a school-house for their district; and the moneys so paid to the new district shall be allowed to the credit of the inhabitants who were taken from the former district, in reduction of any tax that may be imposed for erecting a school-house.

* 480

District offi-
cers. Ta-
xure.

§ 80. [Sec. 70.] The clerk, trustees, and collector of each school district, shall hold their respective offices until the annual meeting of such district next following the time of their appointment, and until others shall be elected in their places.

Vacancies
how filled.

§ 81. [Sec. 71.] In case any such office shall be vacated by the death, refusal to serve, removal out of the district, or incapacity of any such officer, and the vacancy shall not be supplied by a district meeting within one month thereafter, the commissioners of common schools of the town may appoint any person residing in such district to supply such vacancy.

Forfeitures.

§ 82. [Sec. 72.] Every person duly chosen or appointed to any such office, who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of five dollars; and every person so chosen or appointed, and

not having refused to accept, who shall neglect to perform the duties of his office, shall forfeit the sum of ten dollars.

§ 83. [Sec. 73.] Any person chosen or appointed to any such office, may resign the same in the manner provided in Chapter eleventh, Title third, section thirty-third of this Act; and the acceptance of such resignation, shall be a bar to the recovery of either of the penalties mentioned in the preceding section. The justices accepting the resignation shall give notice thereof, to the clerk, or to one of the trustees of the school district, to which the officer resigning shall belong. Resignations

§ 84. [Sec. 74.] It shall be the duty of the clerk of each school district, Duty of district clerk.

1. To record the proceedings of his district in a book to be provided for that purpose by the district, and to enter therein true copies of all reports made by the trustees of his district, to the commissioners of common schools :

2. To give notice of the time and place for special district meetings, when the same shall be called by the trustees of the district, to each inhabitant of such district liable to pay taxes, at least five days before such meeting shall be held, in the manner prescribed in the fifty-sixth section of this Title :

3. To affix a notice in writing of the time and place for any adjourned district meeting, when the same shall be adjourned for a longer time than one month, in at least four of the most public places of such district, at least five days before the time appointed for such adjourned meeting :

* 481

4. To give the like notice of every annual district meeting :

5. To keep and preserve all records, books and papers, belonging to his office, and to deliver the same to his successor in office, in the manner and subject to the penalties provided by law, in relation to the town clerk.

§ 85. [Sec. 75.] It shall be the duty of the trustees of every school district, and they shall have power, Duty of trustees.

1. To call special meetings of the inhabitants of such districts liable to pay taxes, whenever they shall deem it necessary and proper :

2. To give notice of special, annual and adjourned meetings, in the manner prescribed in the last preceding section, if there be no clerk of the district, or he be absent or incapable of acting :

3. To make out a tax list of every district tax, voted by any such meeting, containing the names of all the taxable inhabitants residing in the district at the time of making out the list, and the amount of tax payable by each inhabitant, set opposite to his name :

4. To annex to such tax list a warrant, directed to the collector of the district, for the collection of the sums in such list mentioned, with five cents on each dollar thereof, for his fees :

5. To purchase or lease a site for the district school-house, as designated by a meeting of the district, and to build, hire or purchase, keep in repair, and furnish such school-house with necessary fuel and appendages, out of the funds collected and paid to them for such purposes :

6. To have the custody and safe keeping of the district school-house :

7. To contract with and employ all teachers in the district :

8. To pay the wages of such teachers when qualified, out of the moneys which shall come into their hands from the commissioners of common schools, so far as such moneys shall be sufficient for that purpose; and to collect the residue of such wages, excepting such sums as may have been collected by the teachers, from all persons liable therefor :

9. To divide the public moneys received by them, whenever authorized by a vote of their district, into not exceeding four portions for each year; to assign and apply one of such portions to each quarter or term during which a school shall be kept in such district, for the payment of the teacher's wages, during such quarter or term; and to collect the residue of such wages, not paid by the proportion of public money allotted for that purpose, from the person liable therefor, as above provided :

* 482

* 10. To exempt from the payment of the wages of teachers, such indigent persons within the district, as they shall think proper :

11. To certify such exemptions, and deliver the certificate thereof to the clerk of the district, to be kept on file in his office :

12. To ascertain by examination of the school lists kept by such teachers, the number of days for which each person not so exempted, shall be liable to pay for instruction, and the amount payable by each person :

13. To make out a rate bill containing the name of each person so liable, and the amount for which he is

liable, adding thereto five cents on each dollar of the sum due from him, for collector's fees; and to annex thereto a warrant for the collection thereof:

14. To deliver such rate bill, with the warrant annexed, to the collector of the district, who shall execute the same in like manner with other warrants directed to him, by them.

§ 86. [Sec. 76.] In making out a tax list, the trustees shall apportion the tax on all the taxable inhabitants within the district, according to the valuations of the taxable property which shall be owned or possessed by them, at the time of making out the list within the district, or which being intersected by the boundaries of the district, shall be so owned or possessed by them, partly in such district and partly in any adjoining district; but where taxable property shall be owned by one inhabitant and possessed by another, only one of them shall be taxed therefor.

Taxes how apportioned.

§ 87. [Sec. 77.] Every person owning or holding any real property within any school district, who shall improve and occupy the same by his agent or servant, shall, in respect to the liability of such property to taxation, be considered a taxable inhabitant of such district, in the same manner as if he actually resided therein.

§ 88. [Sec. 78.] If there shall be any real property within a district, cultivated and improved, but not occupied by a tenant, or agent, and the owner of which shall not reside within the district, nor be liable to be taxed for the same in an adjoining district, such owner shall be taxable therefor, in the same manner as if he were an inhabitant of the district; but no portion of such property, but such as shall be actually cleared and cultivated, shall be included in such taxation.

§ 89. [Sec. 79.] The valuations of taxable property shall be ascertained, as far as possible, from the last assessment roll of the town; and no person shall be entitled to any reduction in the valuation of such property, as so ascertained, unless he shall give notice of his claim to such reduction, to the trustees of the district, before the tax list shall be made out.

Valuations how ascertained.

*§ 90. [Sec. 80.] In every case where such reduction shall be duly claimed, and in every case where the valuation of taxable property cannot be ascertained from the last assessment roll of the town, the trustees shall ascertain the true value of the property to be taxed, from the best evidence in their power, giving notice to the per-

* 433
Valuations how ascertained.

sons interested, and proceeding in the same manner as the town assessors are required by law to proceed, in the valuations of taxable property.

Exemption
in certain
cases.

§ 91. [Sec. 81.] Every taxable inhabitant of a district, who shall have been, within four years, set off from any other district, by the commissioners of common schools, without his consent, and shall, within that period, have actually paid in such other district, under a lawful assessment therein, a district tax for building a school-house, shall be exempted by the trustees of the district where he shall reside, from the payment of any tax for building a school-house therein.

Time of mak-
ing tax list.

§ 92. [Sec. 82.] Every district tax shall be assessed, and the tax list thereof be made out by the trustees, within one month after the district meeting in which the tax shall have been voted.

Remedy of
tenant
against own-
er.

§ 93. [Sec. 83.] Where any district tax, for the purpose of purchasing a site for a school-house, or for purchasing, or building, keeping in repair, or furnishing such school-house with necessary fuel and appendages, shall be lawfully assessed and paid by any person, on account of any real property, whereof he is only tenant at will, or for three years, or for a less period of time, such tenant may charge the owner of such real estate with the amount of the tax so paid by him, unless some agreement to the contrary shall have been made by such tenant.

Fuel how
provided.

§ 94. [Sec. 84.] Where the necessary fuel for the school of any district shall not be provided, by means of a tax on the inhabitants of the district, it shall be the duty of every person sending a child to the school, to provide his just proportion of such fuel.

Proportion
how deter-
mined.

§ 95. [Sec. 85.] The proportion of fuel which every person sending children to the school, shall be liable to provide, shall be determined by the trustees of the district, according to the number of children sent by each; but such indigent persons as in the judgment of the trustees, shall be unable to provide the same, shall be exempted from such liability.

When trust-
ees to fur-
nish, and
charge de-
linquent.

§ 96. [Sec. 86.] If any person liable to provide such fuel, shall omit to provide the same, on notice from any one of such trustees, it shall be the duty of the trustees to furnish such fuel, and to charge the person so in default the value of, or amount paid for, the fuel furnished.

1b.

§ 97. [Sec. 87.] Such value or amount may be added

to the rate bill of the moneys due for instruction, and may be collected therewith, and in *the same manner; * 484 or the trustees may sue for and recover the same, in their own names, with costs of suit.

§ 98. [Sec. 88.] The warrant annexed to any tax ^{Warrant.} list or rate bill, shall be under the hands and seals of the trustees, or a majority of them, and shall command the collector to collect from every person in such tax list or rate bill named, the sum therein set opposite to his name; and in case any inhabitant shall not pay such sum on demand, to levy the same of his goods and chattels, together with his fees, and to make a return of such warrant within thirty days after the delivery thereof.¹

§ 99. The warrant annexed to any tax list for the ^{Tax for erecting, &c. school-house, how levied.} collection of a district tax for erecting or repairing any school-house, shall command the collector, in case any person named in such list shall not pay the sum therein set opposite to his name on demand, to levy the same of his goods and chattels in the same manner as on warrants issued by the board of supervisors to the collectors of towns; and such part of the eighty-eighth section of Article five of the aforesaid Title as is repugnant thereto, is hereby repealed.¹ [Ch. 13, Part 1, Title 2, orig. § 37.]

§ 100. All taxes directed to be raised by the act hereby amended, shall be collected in the manner prescribed in the second section of the act entitled "An act to amend the Revised Statutes relating to common schools," passed April 21st, 1831.² [See section 99, above.] ^{All taxes levied in same manner.}

§ 101. The warrants issued by the trustees of school ^{Rate bills how collected.} districts for the collection of rate bills, shall have the like force and effect as warrants issued by the boards of supervisors to the collectors of taxes in towns; and the district collectors are hereby authorized to collect the amount due from any person or persons in their respective districts, in the same manner that the collectors are authorized to collect town and county charges. Those parts of the Revised Statutes which are inconsistent with the provisions of this act, are hereby repealed.³

§ 102. [Sec. 89.] If the sum or sums of money, payable by any person named in such tax list or rate bill, shall not be paid by him, or collected by such warrant within the time therein limited, it shall and may be lawful for the trustees to renew such warrant, in respect to ^{Trustees may renew, or sue delinquent.}

(1) Laws of 1831, chap. 206, § 2, "An act to amend the Revised Statutes relating to common schools," passed April 21, 1831. (2) Laws of 1832, chap. 317, "An act to amend the act relating to common schools." (3) Laws of 1835, chap. 308, § 3.

such delinquent person; or in case such person shall not reside within their district, at the time of making out a tax list or rate bill, or shall not reside therein at the expiration of such warrant, and no goods or chattels can be found therein whereon to levy the same; the trustees may sue for and recover the same, in their name of office.

Proceeding
when com-
missioners
withhold
money.

§ 103. [Sec. 90.] If the moneys apportioned to a district by the commissioners of common schools, shall not have been paid, it shall be the duty of the trustees thereof, to bring a suit for the recovery of the same, with interest, against the commissioner in whose hands the same shall be, or to pursue such other remedy for the recovery thereof, as is or shall be given by law; and the moneys, when recovered, shall be applied by them in the same manner as if they had been paid without suit.

Annual re-
port of trus-
tees.

§ 104. [Sec. 91.] The trustees of each school district shall, after the first day of January, in every year, and on or before the first day of March thereafter, make and transmit a report, in writing, to the commissioners of common schools for such town, dated on the first day of January, in the year in which it shall be transmitted.

How made.

§ 105. [Sec. 92.] Every such report signed and certified by a majority of the trustees making it, shall be delivered to the town clerk, and shall specify,

Its contents.

1. The whole time any school has been kept in their district during the year ending on the day previous to the date of such report, and distinguishing what portion of the time such school has been kept by qualified teachers:

2. The amount of moneys received from the commissioners of common schools, during such year, and the manner in which such moneys have been expended:

* 485

*3. The number of children taught in the district during such year:

4. The number of children residing in the district on the last day of December, previous to the making of such report, over the age of five years, and under sixteen years of age, (except Indian children otherwise provided for by law,) and the names of the parents or other persons with whom such children shall respectively reside, and the number of children residing with each.

Paupers not
to be return-
ed.

§ 106. It shall not be lawful for the trustees of any school district to include, in their annual returns, the names of any children who are supported at a county poor-house.¹

§ 107. [Sec. 93.] No teacher shall be deemed a qualified teacher, within the meaning of this Title, who shall not have received, and shall not then hold, a certificate of qualification, dated within one year, from the inspectors of common schools for the town in which he shall be employed. Qualified teachers.

§ 108. [Sec. 94.] Where a school district is formed out of two or more adjoining towns, it shall be the duty of the trustees of such district, to make and transmit a report to the commissioners of common schools, for each of the towns out of which such district shall be formed, within the same time, and in the same manner, as is required in sections ninety-one and ninety-two of this Title; distinguishing the number of children over the age of five and under sixteen years, residing in each part of a district which shall be in a different town from the other parts, and the number of children taught, and the amount of school moneys received for each part of the district. District formed from two towns, how to report.

§ 109. [Sec. 95.] Where any neighborhood shall be set off by itself, the inhabitants of such separate neighborhood shall annually meet together and choose one trustee; whose duty it shall be, every year, within the time limited for making district reports, to make and transmit a report in writing, bearing date on the first day of January, in the year in which it shall be transmitted, to the commissioners of common schools of the town from which such neighborhood shall be set off, specifying the number of children over the age of five and under sixteen years, residing in such neighborhood, the amount of moneys received from the commissioners since the date of his last report, and the manner in which the same have been expended. Separate neighborhoods, how to report.

§ 110. [Sec. 96.] Every trustee of a school district, or separate neighborhood, who shall sign a false report to the commissioners of common schools of his town, with the intent of causing such commissioners to apportion and pay to his district or neighborhood, a larger sum than its just proportion of the school moneys of the town, shall, for each offence, forfeit the sum of twenty-five dollars, and shall also be deemed guilty of a misdemeanor. Penalty for false report

§ 111. [Sec. 97.] All property now vested in the trustees of any school district, for the use of schools in the district, or which may be hereafter *transferred to such Property of districts how held. * 488

trustees for that purpose, shall be held by them as a corporation.

Trustees to
account.

§ 112. [Sec. 98.] The trustees of each school district shall, on the expiration of their offices, render to their successors in office, and to the district, at a district meeting, a just and true account, in writing, of all moneys received by them respectively, for the use of their district, and of the manner in which the same shall have been expended; which account shall be delivered to the district clerk, and be filed by him.

Balance paid
to succe-
sors.

§ 113. [Sec. 99.] Any balance of such moneys, which shall appear from such account to remain in the hands of the trustees or either of them, at the time of rendering the account, shall immediately be paid to some one or more of their successors in office.

Forfeiture
for neglect.

§ 114. [Sec. 100.] Every trustee who shall refuse or neglect to render such account, or to pay over any balance so found in his hands, shall for each offence, forfeit the sum of twenty-five dollars.

How prose-
cuted.

§ 115. [Sec. 101.] It shall be the duty of his successors in office to prosecute without delay, in their name of office, for the recovery of such forfeiture; and the moneys recovered shall be applied by them to the use and benefit of their district schools.

Remedy
against for-
mer trustees

§ 116. [Sec. 102.] Such successors shall also have the same remedies for the recovery of any unpaid balance, in the hands of a former trustee, or his representatives, as are given to the commissioners of common schools against a former commissioner and his representatives; and the moneys recovered shall be applied by them to the use of their district, in the same manner as if they had been paid without suit.

Bonds to be
delivered.

§ 117. [Sec. 103.] All bonds or securities, taken by the trustees from the collector of their district, shall on the expiration of their office, be delivered over by them to their successors in office.

Fees of col-
lector.

§ 118. [Sec. 104.] The collector of each school district shall be allowed five cents on every dollar collected and paid over by him.

His duty in
collecting
taxes

§ 119. [Sec. 105.] It shall be his duty to collect and pay over to the trustees of his district, some or one of them, all moneys which he shall be required by warrant to collect, within the time limited in such warrant for its return, and to take the receipt of such trustee or trustees for such payment.

To give bond

§ 120. [Sec. 106.] Every collector of a school district

shall, before receiving any warrant for the collection of moneys, execute a bond to the trustees of his district when required by them, in their corporate name, with one or more sureties, to be approved by one or more of the trustees, in double the amount of taxes to be collected, conditioned for the due and faithful execution of the duties of his office.

*§ 121. [Sec. 107.] If any collector shall not execute such bond within the time allowed him by the trustees for that purpose, which shall not be less than ten days, his office shall be vacated; and the trustees may appoint any other person residing in the district, as collector in his place. * 487
If not, how
to proceed.

§ 122. [Sec. 108.] If by the neglect of the collector, any moneys shall be lost to his district, which might have been collected within the time limited in the warrant delivered to him for their collection, he shall forfeit to his district the full amount of the moneys thus lost, and shall account for and pay over the same to the trustees of his district, in the same manner as if they had been collected. Forfeiture
for neglect.

§ 123. [Sec. 109.] For the recovery of all forfeitures, and of balances in the hands of a collector which he shall have neglected to pay over, the trustees of the district may sue in their name of office, and shall be entitled to recover the same with interest and costs; and the moneys recovered shall be applied by them in the same manner as if paid without suit. Trustees
may sue.

§ 124. Any person conceiving himself aggrieved in consequence of any decision made, Appeals to
superinten-
dent of com-
mon schools.

1. By any school district meeting :
2. By the commissioners of common schools, in the forming or altering, or in refusing to form or alter any school district, or in refusing to pay any school moneys to any such district :
3. By the trustees of any district, in paying any teacher, or refusing to pay him, or in refusing to admit any scholar gratuitously into any school :
4. Or concerning any other matter under the present Title :

May appeal to the superintendent of common schools, whose decision thereon shall be final.¹

(1) Amendatory act of 1830, chap. 320, § 7, by which the above § is substituted for the orig. secs. 110 and 111.

ARTICLE SIXTH.

Of certain duties of the County Clerk.

Sec. 125. County clerk to report to the superintendent of common schools what, and when.

126. Forfeiture for neglecting it.

127. Who to prosecute for it, and where paid when recovered.

128. Duty of county clerk when commissioners do not report.

To transmit
school re-
ports.

§ 125. [Sec. 112.] It shall be the duty of each county clerk, between the first day of August¹ and the first day of October,¹ in every year, to make and transmit to the superintendent of common schools, a report in writing, containing the whole number of towns in his county, distinguishing the towns from which the necessary reports have been made *to him by the commissioners of common schools, and containing a certified copy of all such reports.

* 498

Penalty for
neglect.

§ 126. [Sec. 113.] Every clerk who shall refuse or neglect to make such report, within the period so limited, shall, for each offence, forfeit the sum of one hundred dollars to the use of the school fund of the state.

How prosec-
uted and
applied.

§ 127. [Sec. 114.] It shall be the duty of the superintendent of common schools, to prosecute without delay, in his name of office, for such forfeiture, and to pay the moneys recovered, into the treasury of the state, to the credit of the school fund.

Notice to
town clerk.

§ 128. [Sec. 115.] It shall be the duty of each county clerk, immediately after the first day of August² in every year, in case the commissioners of common schools of any town in his county shall have neglected to make to him their annual report, to give notice of such neglect to the clerk of the town, who shall immediately assemble such commissioners for the purpose of making their report.

Local Regulations respecting Common Schools.

NEW-YORK.

Art. 7, Title 2. Chap. 15, Part 1, R. 8.

* 499
Clerk of N.
York.

*§ 129. [Sec. 116.] Whenever the clerk of the city and county of New-York, shall receive notice from the superintendent of common schools, of the amount of the moneys apportioned to the city of New-York, for the support and encouragement of common schools therein,

(1) Laws of 1835, chap. 308, § 2. (2) *August* substituted for *October*, by chap. 308, laws of 1835, § 2.

he shall immediately lay the same before the corporation of the city, in common council convened.¹

§ 130. [Sec. 117.] The corporation shall annually raise and collect, by tax upon the inhabitants of the city, a sum of money equal to the sum specified in such notice, at the same time, and in the same manner as the contingent charges of the city are levied and collected.¹

Corporation to raise money.

§ 131. The corporation of the city of New-York, are hereby authorized in addition to the amount now required to be raised for the support of schools in the said city, annually to raise and collect by tax upon the inhabitants thereof, a sum of money equal to one-eightieth of one per cent of the value of the real and personal property in the said city, or liable to be assessed therein, to be applied exclusively to the purposes of common schools in the said city.²

Corporation of N. Y. to raise additional sum.

§ 132. The corporation of the city of New-York are hereby authorized, in addition to the amount now required to be raised for the support of schools in the said city, annually to raise and collect by tax upon the inhabitants thereof, a sum of money, equal to three-eightieths of one per cent of the value of the real and personal property in the said city, or liable to be assessed therein, to be applied exclusively to the purposes of common schools in the said city.³

§ 133. [Sec. 118.] The corporation shall, on or before the first day of May in every year, direct that a sum of money equal to the amount last received by the chamberlain from the common school fund, be deposited by him, together with the sum so received from the school fund, in one of the incorporated banks in the city, to the credit of the commissioners of school money for the city, and subject only to the drafts of the commissioners, drawn payable to the order of the treasurers of the respective societies or schools entitled thereto, or to some person duly authorized by the trustees of such societies or schools.⁴

Where deposited.

§ 134. [Sec. 119.] The corporation shall, once in every three years, after the month of January in the year one thousand eight hundred and twenty-five, appoint from the inhabitants of the city, one from each ward,

Commissioners how appointed, &c.

(1) Laws of 1824, p. 337, § 1 and 2. (2) Ib. 1829, chap. 265. (3) Ib. 1831, chap. 119. By both of the acts of 1829 and 1831, from which the above sections 131 and 132 are taken, it is provided that the several original sections of this Article (7th) from the 117th to the 127th both inclusive, shall apply to the moneys by the said acts authorized to be raised. (4) Ib. 1824, p. 337, § 1 and 2.

to be commissioners of school money, who shall hold their offices for three years, and until others are appointed in their places; and who, before they enter upon the duties thereof, shall take the oath of office prescribed in the constitution of this state.¹

Vacancies

§ 135. [Sec. 120.] All vacancies occurring in the office of commissioner, shall be supplied by the corporation; and each person appointed to fill a vacancy, shall hold his office for the residue of the term for which his predecessor was appointed.²

Who ineligible.

§ 136. [Sec. 121.] No trustee or other officer of any society or school, which shall be entitled to receive a share of the school moneys, shall be appointed a commissioner of school moneys.²

* 490
Moneys how distributed.

§ 137. [Sec. 122.] The corporation shall, once at least in three years, by ordinance, designate the societies or schools which shall be entitled to receive a share of the school moneys, and prescribe the rules and restrictions under which such moneys shall be received by such societies or schools respectively. Such ordinance shall be published in two or more of the public newspapers of the city.²

When trustees to report; contents of report.

§ 138. [Sec. 123.] The trustees of every society or school thus designated, shall, on or before the fifteenth day of May in every year, make a report in writing, under their corporate seal, and signed by their presiding officer and secretary, to the commissioners of school money; which report shall state,

1. The average number of scholars over four and under sixteen years of age, which shall have been taught, free of expense to such scholars, in their school during the year preceding the first of May; which number shall be ascertained by adding to the number of children on register at the commencement of each quarter, the number admitted during that quarter, and the total shall be considered the average for that quarter:

2. The average number that has actually attended such schools during the year, to be ascertained by the teachers keeping an exact account of the number of scholars present every school time, or half day; which being added together, and divided by the whole number of school times in the year, shall be considered the average of attending scholars; which average shall be sworn or affirmed to by the teachers:

(1) Laws of 1824, page 337, § 3; laws of 1826, p. 93. (2) *Ib.* 1824, p. 338, § 3. (3) *Ib.* § 4.

3. The times during which such schools have been kept open during the year :

4. The amount of moneys last received from the commissioners of school money, and the purposes for, and the manner in which the same shall have been expended :

5. A particular account of the state of the schools under their care, and of the property and affairs of such school or society.¹

§ 139. [Sec. 124.] It shall be the duty of the commis- Duties of
commissioners. sioners of school money,

1. To call for such reports, by advertisements in two or more of the public newspapers printed in the city of New-York, for at least two weeks preceding the fifteenth day of May in every year :

2. To apportion and pay, on or before the first day of June in every year, the amount of money deposited to their credit, to the several societies or schools which shall be designated by the ordinance of the corporation as entitled to receive a share thereof, and who shall have complied with the requisitions of this Article :

3. To visit and examine the societies and schools receiving such moneys, twice at least in every year, and to examine their registers and other books ; and to require such other proof, on oath or otherwise,* as they may think proper, relating to the subject matter of any report made by the trustees of such societies and schools, as to the number of scholars, and the appropriation of moneys received by them, and as to all other matters connected with the interests of said schools in such city :

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4. To make a report to the corporation and to the superintendent of common schools, on or before the first day of December in every year, comprising all the matters contained in the reports of the respective societies and schools, for the year next preceding the first day of May in the same year, and such other matters as they may deem necessary to promote the interests of said schools in the city of New-York :

5. To cause a copy of such report to be filed at the same time, in the clerk's office of the city and county.²

§ 140. [Sec. 125.] The apportionment of school moneys shall be made to each school according to the average number of children over the age of four and under sixteen years, who shall have actually attended such school during the preceding year ; but no school shall be

Apportion-
ment how
made

(1) Laws of 1824, p. 338, § 5. (2) Ib. 6, 7 and 8.

entitled to a portion of such moneys, that has not been kept open at least nine months during the year.

When with-
hold.

§ 141. [Sec. 126.] Every such society or school in the city of New-York, which shall neglect, when so required by the commissioners, to produce satisfactory proof before the first day of June in any year, relating to the subject matter of any report made by its trustees, shall forfeit its share of school moneys for that year; and such share shall remain in the hands of the commissioners, to be distributed by them as a part of the school moneys of the succeeding year.¹

Appeal.

§ 142. [Sec. 127.] Every such society or school considering itself aggrieved by any decision of the commissioners of school money, may appeal therefrom to the superintendent of common schools, whose decision thereon shall be final.¹

Money to be
paid to the
public
school at
almshouse.

§ 143. The commissioners of school money for the city of New-York are hereby authorized and directed to pay to the public school society of New-York the sum of two thousand seven hundred and fifty-eight dollars and eighty-six cents, or such other sum as may have been retained by them in the payment or distribution of school moneys, on the ground that the school connected with the almshouse of the said city, and known as public school No. six, was beyond the limits of the county of New-York.²

To share in
school in-
come.

§ 144. The said almshouse school shall be entitled to its share of school moneys in any apportionment thereof hereafter to be made by the said commissioners.²

Trustees to
take charge
of almshouse
school.

§ 145. The trustees of the said public school society of New-York are hereby authorized to take charge and superintend the management of the said almshouse school, as one of the public schools of the said city.²

Incidental
expenses of
commis-
sioners.

§ 146. The common council of the city and county of New-York, are hereby authorized to pay out of the special school tax money raised for the support of common schools in the same, any sum not exceeding five hundred dollars in any one year, to the commissioners of school money in said city and county, for the incidental expenses attending their duty as commissioners, in visiting the schools entitled to a portion of the moneys raised by said tax.³

(1) Laws of 1824, p. 339, § 7. (2) Laws of 1835, chap. 64. (3) Laws of 1834, chap. 35.

TROY.

Art. 7, title 2, chap. 15, part 1 R. S.

§ 147. [Sec. 128.] The four first wards of the city of Troy shall be and remain one school district, and shall not be subject to alteration by the commissioners of common schools for that city.¹ Troy; school district in.

§ 148. [Sec. 129.] The common council of the city shall annually, on the third Tuesday of May, appoint not exceeding thirteen trustees, to manage the concerns of the school in such district, and to perform the duties of inspectors and trustees thereof, as required by law and the ordinances of the common council.¹ Inspectors and trustees

§ 149. [Sec. 130.] Every trustee, before he shall enter on the duties of his office, shall take and subscribe an oath or affirmation, in the form prescribed* in the constitution of the state, before the mayor or recorder, or one of the aldermen or justices of the city, and shall file the same in the office of the clerk of the city.¹ Oath. * 472

§ 150. [Sec. 131.] Every person appointed a trustee, who shall refuse or neglect to file such oath or affirmation within fifteen days after he shall have received notice of his appointment, shall forfeit the sum of ten dollars, to be recovered in the manner prescribed in the "Act to incorporate the city of Troy," passed April 12th, 1816.¹ Penalty for neglect.

§ 151. [Sec. 132.] The commissioners of common schools for the city shall pay to the chamberlain of said city, such a portion of the school moneys to be distributed by them, as the district above designated may be entitled to receive, and the same shall be paid over by the chamberlain to the trustees of such district.¹ School moneys, how paid.

§ 152. [Sec. 133.] The common council of the city shall have power to raise a sum not exceeding five hundred dollars annually, by tax on the inhabitants of such district, for repairing the school-house therein, and defraying the expenses of the school; which tax shall be assessed and collected as the other taxes of the city are assessed and collected, and when collected, shall be paid to the chamberlain of the city.¹ School-house, how repaired, &c

§ 153. [Sec. 134.] In the execution of the powers which, by the preceding sections, are vested in the common council of the city, the aldermen of the fifth and sixth wards shall not be considered as members of such council, nor be permitted to vote on any question that Aldermen of 5th and 6th wards not to vote.

(1) Laws of 1816, p. 147, § 40 to 46.

may arise therein, touching the concerns of such district or its school.¹

Tuition to be
gratuated,
&c.

§ 154. [Sec. 135.] The trustees of such school shall have power to exempt from the payment of tuition money and other charges, all such scholars and the persons sending them to school, as they shall judge unable to bear the charge thereof; and to fix the sum which each person liable to pay for the same shall be compelled to pay, having regard to the ability of the person so liable; and to appoint a collector to collect such sums from the persons liable to pay the same.¹

Commis-
sioners and
inspectors.
how chosen.

§ 155. [Sec. 136.] There shall annually be elected, at the time and in the manner the other officers of the city are chosen, one commissioner of common schools in each of the wards of the city of Troy; and in each of the fifth and sixth wards, three inspectors of common schools for such wards shall be chosen, at the same time and in the same manner.¹

Powers of
common
council to
set off dis-
tricts.

§ 156. The mayor, recorder, aldermen and commonalty may, by resolution to be entered in their minutes, set off and detach from the first school district of said city, as now established by law, all such parts of the first and second wards of said city, as they may deem expedient, and annex such part and portion of the said first and second wards so set off to the fifth ward of said city, for the purpose of forming a school district to be composed of that part of the first and second wards of said city so to be set off, and a portion of the fifth ward of said city; and whenever such district shall be set off, it shall be the duty of the commissioners of common schools of the said city to organize a school district, to be composed of such part of the said first school district so set off as the commissioners of common schools shall deem expedient; and the school-house now erected near the east boundary of the said second ward shall be, continue and remain the district school-house of the said school district so to be formed; and the said district shall possess all the rights and privileges, and be subject to the same liabilities as the other school districts formed in the fifth and sixth wards of the said city.²

To establish
schools in
the first dis-
trict.

§ 157. It shall be lawful for the mayor, recorder, aldermen and commonalty to establish one or more schools in the first school district, in addition to the school already established by law in the said first school district, and to purchase the necessary land, and to erect school-hou-

(1) Laws of 1816, p. 147, § 40 to 46. () Laws of 1834, chap. 296, § 15.

ees thereon; and when such school-houses shall be erected, and schools established therein, the same shall be under the control and supervision of the common council of said city; and the trustees to be annually appointed by the common council of said city for school district number one shall be trustees of the said additional schools, and shall possess all the powers in relation to such additional schools as they now possess in relation to the school established in the said first school district; and when such additional schools shall be established, it shall be the duty of the said trustees, under the direction of the common council, to apportion the common school moneys allotted to the first school district, among the several schools in proportion, as nearly as may be, to the number of scholars instructed in each of the said schools, or in such other manner as shall be just and equal.¹

§ 158. For the purpose of carrying the provisions of the next preceding section of this act into effect, the mayor, recorder, aldermen and commonalty may levy and collect, by tax upon the estates, real and personal, of the freeholders and inhabitants and taxable property in the first, second, third and fourth wards, in the same manner that other taxes are levied and collected, a sum of money not exceeding two thousand dollars in any one year; or the said mayor, recorder, aldermen and commonalty may defray the necessary expenses thereof from the general funds of said city.¹

Taxes for school moneys.

HUDSON.

Art. 7, title 2, chap. 15, part 1 R. 8.

§ 159. [Sec. 137.] The amount of moneys allowed to the city of Hudson by the superintendent of common schools, shall be apportioned by the treasurer of the county of Columbia, between "The Hudson Lancaster School Society," and such common school districts and parts of districts as now are or may hereafter be organized without the bounds of the compact part of the city, in a ratio proportioned to the *number of children over the age of five and under sixteen years, within such compact part, and the number of such children in such districts and parts of districts respectively, without such compact part.²

Hudson; school moneys, how appropriated.

* 493

§ 160. [Sec. 138.] The treasurer of the county of

Treasurer to pay moneys.

(1) Laws of 1834, chap. 296, § 16 and 17. (2) Laws of 1826, p. 92; 1817, p. 324, § 7.

Columbia shall pay the amount thus apportioned to the Hudson Lancaster School to its treasurer, and the amount thus apportioned to such school districts and parts of districts to the commissioners of common schools for the city of Hudson.¹

How applied § 161. [Sec. 139.] The amount thus paid to the Hudson Lancaster School Society, shall be applied by the trustees of that society to the education of such poor children belonging to the city of Hudson as may be, in their opinion, entitled to gratuitous education, and to the support and maintenance of the school or schools established by such trustees.¹

Copy of apportionment § 162. [Sec. 140.] The treasurer of the county of Columbia shall transmit to the board of supervisors of the county, at their annual meeting, a certified copy of the apportionment made by him.¹

Supervisors to raise equal amount. § 163. [Sec. 141.] The supervisors shall annually add to the amount to be raised on the said districts and parts of districts respectively, for defraying town expenses, a sum equal to the amount thus apportioned to such districts and parts of districts, with the addition of five cents on the dollar for collector's fees, and shall cause the same to be collected at the same time and in the same manner as other taxes levied on towns are collected.¹

Collector how to pay. § 164. [Sec. 142.] The collector shall pay over the moneys so collected by him, after deducting five cents on the dollar for his fees, to the commissioners of common schools for the city of Hudson.¹

Commissioners, how to distribute. § 165. [Sec. 143.] The commissioners of common schools for that city shall distribute and pay to the trustees of such school districts and parts of districts, the amount so received by them from the collector and the county treasurer, in the same proportion in which such moneys were collected from each district and part of a district.¹

Assessors to designate inhabitants. § 166. [Sec. 144.] To enable the supervisors of the county to make such addition, it shall be the duty of the assessors of the ward within which such school districts and parts of districts shall be situate, to designate on their assessment rolls the inhabitants who reside within each of such districts and parts of districts.¹

(1) Laws of 1826, p. 92; 1817, p. 324, § 7.

ALBANY.

Art. 7, title 2, chap. 15, part 1 R. 8.

§ 167. [Orig. sec. 1.] In each of the wards of the city of Albany, there shall be elected one commissioner, and one inspector of common schools, at the annual election for supervisor, by the persons qualified to vote for town officers; but the persons residing west of Perry-street, shall not vote for the said commissioner and inspector at such election.¹

One commissioner and one inspector to be chosen in each ward of Albany.

§ 168. [Orig. sec. 2.] Any vacancy by death, resignation, or removal from the said city, of any commissioner or inspector, shall be filled by the common council thereof, until the next election.

Vacancies how filled.

§ 169. [Orig. sec. 3.] The commissioners so elected shall form a board, with power, from time to time, to form the said city into school districts, not exceeding five in number, east of Perry-street: They shall also appoint three trustees for each district, to hold their offices for one year, and shall fill any vacancy which shall happen.

Powers of commissioners.

§ 170. [Orig. sec. 4.] The said commissioners, with the consent of the common council, may form another or other school districts in the said city of Albany.

§ 171. [Orig. sec. 5.] The trustees of each district, or a majority of them, shall, within their respective districts have power to hire a school-house or rooms, and furnish the same with necessary fuel and appurtenances; appoint a collector; hire a teacher or teachers; fix the rate of tuition fees, not exceeding two dollars a quarter for any scholar; and exempt from the payment of teacher's wages any indigent persons within the district they shall think proper.

Powers of trustees of districts.

§ 172. [Orig. sec. 6.] The clerk of the common council shall be clerk to the commissioners, and shall be subject to the like duties, and receive the like compensation as town clerks in the several towns, in similar cases.

Clerk to commissioners.

§ 173. [Orig. sec. 7.] The superintendent of common schools shall apportion to the city and county of Albany their share of the school moneys, according to the number of children over five and under sixteen years of age residing therein, in the same manner as to other counties in this state.²

Apportionment of school moneys to Albany.

§ 174. [Orig. sec. 8.] The county treasurer shall an-

Chamberlain to receive school moneys.

(1) Laws of 1830, chap. 240. (2) This section seems to be superseded by § 5 and 6 of chap. 320, laws of 1830, which was passed subsequent to this act. See ante § 3 of this title.

nually pay to the chamberlain of the city of Albany, that part of the school moneys apportioned to the city of Albany for the support of common schools to be established by this act, and for the support of Lancaster schools established or to be established in the said city.

Amount to
be raised by
tax.

§ 175. [9.] The supervisors of the county of Albany, at their annual meeting in each year, shall cause a sum of money equal to twice the amount of the money apportioned to the city from the common school fund, together with collectors' fees, to be raised, levied and collected, in the same manner that other taxes are raised, levied and collected; and when so raised, to be paid to the chamberlain, for the support of common schools in the city of Albany, to be apportioned and distributed as now provided for by law.¹

Chamber-
lain to keep
moneys dis-
tinct.

§ 176. [Orig. sec. 10.] All moneys paid to the chamberlain for the support of common schools in the city of Albany, shall be kept distinct from other money, and subject to the drafts of the commissioners, and payable to the orders of the trustees of the respective school districts, and to the trustees of the Lancaster school society.

Apportion-
ment of
school mo-
neys by com-
missioners.

§ 177. [Orig. sec. 11.] The board of commissioners shall apportion the school moneys to be received by them, among the several school districts and the Lancaster schools, provided such schools shall have been kept at least nine months in the year, in the five districts created by the third [169th] section of this act, and at least four months in the year in the district created by the fifteenth [181st] section thereof, in proportion to the average number of scholars attending such schools, over five and under sixteen years, who have actually attended such schools during the year; to be ascertained by the teachers keeping an exact account of the number of scholars present every school time or half day, which being added together, and divided by five hundred, the number of half days for a year, shall be considered the average of attending scholars; which average shall be sworn or affirmed to by the teacher.

1b.

§ 178. [Orig. sec. 12.] If a school shall have been kept four months in any one or all of the said districts, for the year one thousand eight hundred and thirty, then the same shall participate proportionably in the said school moneys to be apportioned in the said city in the year one thousand eight hundred and thirty-one.

General
powers and

§ 179. [Orig. sec. 13.] The commissioners, inspec-

tors, trustees and collectors, shall possess the like powers, and be subject to the like duties and liabilities, as the same officers and persons in the towns in this state, except when it is otherwise provided in this act, and except also that the said commissioners and inspectors shall not demand or receive any pay for services under this act.

duties of officers.

§ 180. [Orig. sec. 14.] The trustees of the Lancaster school society, before they receive the moneys apportioned to them, shall make returns, the same as the district schools are required to make.

Returns of Lancaster schools.

§ 181. [Orig. sec. 15.] The inhabitants of the city of Albany, residing west of Perry-street, and east of a parallel line three miles west thereof, qualified to vote for town officers, shall, on the Tuesday succeeding the annual election for supervisors in each year, meet at some convenient place within said bounds, and there elect by ballot one commissioner and one inspector of common schools, and one collector, and form themselves into a school district, the same as a separate ward, for all the purposes of this act: And they are hereby authorized to impose and collect the same taxes upon the real and personal property within the said district, for the hire or erection of a school-house, and the support of a teacher, as if they were a separate ward, and shall be entitled to a like distribution of the school money. The first meeting shall be held at the house now occupied by James Magher; and the inhabitants then assembled shall determine when the next meeting shall be held.¹

Inhabitants west of Perry-street to form district, elect officers; impose taxes.

§ 182. [Orig. sec. 1.] The commissioners of common schools of the city of Albany east of Perry-street, or the majority of them, at any stated meeting thereof, may, with the consent of the common council of said city, in each year, for the term of three years, direct such sum to be raised in the said city, for the support of common schools for the then ensuing year, as they may deem necessary, but not exceeding a sum equal to the amount apportioned to the common schools and Lancaster schools in said city, east of Perry-street, from the common school fund.²

Money to be raised for schools east of Perry-st. for three years. [Extended 5 years by § 189 post.]

§ 183. [Orig. sec. 2.] The supervisors of the county of Albany, at their annual meeting, shall cause such sum as the said commissioners shall direct to be raised, to be levied and collected upon the real and personal property within the said city of Albany, east of Perry-street,

fb. to be paid to chamberlain.

(1) The preceding 15 sections are from "An act relating to common schools in the city of Albany," passed April 17, 1830, chap. 240, p. 260.

(2) Laws of 1831, chap. 111.

together with the collector's fees, in the same manner that other taxes are levied and collected; and when so collected it shall be paid to the chamberlain for the support of common schools in the said city, east of Perry-street.¹

Moneys how applied.

§ 184. [Orig. sec. 3.] The commissioners may direct the application of the moneys thus raised, or any part thereof, for the hire, purchase or erection of a school-house in any district in the said city, east of Perry-street, and with the consent of the common council may increase the number of districts east of Perry-street, from time to time, and alter the same.¹

Districts may be increased.

Other moneys how apportioned.

§ 185. [Orig. sec. 4.] The commissioners shall apportion the moneys received by them for the use of common schools in the city of Albany, other than the moneys which shall be raised as herein provided, among the several districts and the Lancaster schools, provided such schools shall have been kept at least six months in the year in the districts east of Perry-street, and four months in the districts west of Perry-street, in proportion to the average number of scholars attending such schools over five and under sixteen years, who have actually attended such schools during the year, to be ascertained in the manner prescribed in the eleventh [177th] section of the act hereby amended, and shall in like manner apportion the moneys to be raised as herein provided, and not otherwise appropriated among the several districts and the Lancaster schools in the said city, east of Perry-street.¹

Districts west of Perry-street, powers, &c.

§ 186. [Orig. sec. 5.] The inhabitants of the city of Albany residing west of Perry-street, within any district now formed, or which shall hereafter be formed, in said city, and the clerk, trustees and collector of every such district, shall possess the like powers and be subject to the like duties and liabilities as the inhabitants and same officers of school districts in the towns in this state, except where it is otherwise provided in this act.²

School-house in district No. 2.

§ 187. The trustees of school district number two in the city of Albany, or their successors in office, are hereby empowered to erect a school-building, for the use of said district school, and they are hereby authorized to mortgage the lot and building for the balance that may be due on the same, over and above the moneys now in hands of said trustees.³

(1) Laws of 1831, chap. 111. (2) The preceding five sections are from "An act to amend an act, entitled 'An act relating to common schools in the city of Albany,' passed April 11, 1831," chap. 111, p. 153. (3) Laws of 1832, chap. 263.

§ 188. It shall and may be lawful for said trustees, ^{Per cent on rate bills.} or their successors in office, to exact ten per cent on each rate bill for tuition, to be applied towards the expenses of interest, and the mortgage upon said building.¹

§ 189. The provisions of an act to amend an act en- ^{Act of 1831 extended to 1833.} titled "An act relating to common schools in the city of Albany," passed April 11, 1831, are hereby continued in full force and operation for the term of five years from and after the passage of this act.²

Chap. 243, Laws of 1837.—Passed April 20.

§ 1. The board of supervisors of the county of Albany are hereby directed, at their next annual meeting, and at each successive annual meeting, for the term of nine years next thereafter, to cause in each successive year as aforesaid, to be assessed, levied and collected, the sum of two thousand five hundred dollars, making in all a sum of twenty-five thousand dollars, upon the taxable property in the city of Albany east of Perry-street, for the purpose of erecting in each school district east of Perry-street, a substantial brick school building, equal to that now erected in school district number two; which sum when collected, shall be paid to the chamberlain of the city of Albany, and to be by him applied to the payment of the moneys that may be borrowed under this act. ^{Money to be raised by tax}

§ 2. The said district school buildings shall be built ^{Buildings to be of stone or brick.} of stone or brick on the building lots now belonging to said districts, or that may hereafter be vested in said school districts.

§ 3. The common council of the city of Albany are hereby directed to appoint three commissioners; and the said commissioners, or a majority of them, are hereby authorized to fix the site, and to determine upon the plan, form and manner of the construction of the said district school buildings, and to superintend the building of the same, and as often as may be necessary to draw for and receive the moneys appropriated and borrowed for the construction of the said district school buildings, and to do all such other acts and things as may be necessary and proper to be done to complete the same, and also to pay up any mortgage due or to become due on any district school lot and building east of Perry-street, the title whereof is vested in the district; and the said ^{Commissioners to fix sites and superintend buildings.}

(1) Laws of 1832, chap. 263. (2) § 13, of chap. 230, laws of 1834, passed May 1, 1834.

commissioners may, with the consent of the common council of said city, purchase a lot, or lots, or buildings for any school district east of Perry-street, or exchange those now belonging to the district for a more eligible site, vesting the title thereof in said district.

To give security.

§ 4. The said commissioners shall, before they enter upon their duties, give a bond to the mayor of said city, with sufficient securities to be approved by him, in a penalty of double the amount entrusted to them, conditioned for the faithful expenditure of the moneys committed to their charge for the purposes aforesaid, which said bond shall be filed in the chamberlain's office.

Their pay.

§ 5. The said commissioners shall be allowed such sum for their services, not exceeding two dollars for every day actually and necessarily devoted to the performance of their duties under this act, as the common council shall think proper; such allowance to be audited by the said board of common council. The said commissioners shall render annually an account of their proceedings and expenditures to the common council, until they shall have fully executed their duties under this act.

Loan of \$25,000.

§ 6. The comptroller is hereby authorized to loan to the city of Albany a sum not exceeding twenty-five thousand dollars, out of any moneys now or hereafter in the treasury of this state belonging to the capital of the common school fund, on receiving from the chamberlain, on behalf of said city, a bond, conditioned for him as treasurer and his successor in office, to repay the said sum in ten equal annual instalments, together with the annual interest on said loan from the time it is made, at the rate of six per cent per annum; and which bond said chamberlain is hereby authorized to make and execute.

Interest of loan provided.

§ 7. The board of supervisors of said county, if the same shall become necessary, shall cause to be levied, assessed and collected upon taxable property in the city of Albany east of Perry-street, in addition to the sums hereinbefore directed to be levied, assessed and collected annually, a sum sufficient to pay the interest of the said sum or sums to be loaned; and it shall be the duty of the said chamberlain of the said city, to pay the said sums of money herein before directed to be levied, assessed and collected, together with the interest thereon, when so collected and paid to him, into the treasury of this state, to apply in payment of his said bond.

Lancaster school-house

§ 8. The said commissioners are hereby authorized,

with the consent of the common council first had and obtained, to purchase a site, and erect a Lancaster school-building, of the same dimensions as a district school-building, in order to comply with the report of the committee of the common council, adopted by the board, in one thousand eight hundred and thirty-three.

§ 9. The school-buildings, and the lots on which the same are erected, now belonging to, or that may hereafter belong to, any school district in said city of Albany, shall be exempt from all taxes or assessments.

Exemption from taxes.

§ 10. This act shall take effect immediately after the passage thereof.

Act to take effect.

Chap. 358, Laws of 1837.—Passed May 8.

§ 1. The commissioners of common schools of the city of Albany, in each year, shall apportion of the moneys paid to the chamberlain of said city, for the support of common schools, one hundred dollars to each school district east of Perry-street, and twenty-five dollars to each school district west of Perry-street; said moneys to remain in the chamberlain's hands to be paid to the trustees of each school district, in quarterly payments, on the first day of April, July, October and January, in each year, to be applied for contingent expenses, repairs, fuel, &c., and to be accounted for as other school moneys are, to the district and to the commissioners of common schools.

Contingent expenses.

§ 2. The commissioners of common schools shall apportion annually, on the returns of qualified teachers, for the instruction of the children in the Albany orphan asylum for destitute children, their proportion of the public money for the support of schools, according to the eleventh section of the act relating to common schools in the city of Albany, passed April 17, 1830, which money, when so apportioned and paid to the trustees of the district, shall be paid to such teachers for teachers' wages.

Allowance to orphan asylum.

Chap. 369, Laws of 1837.—Passed May 9.

§ 2. All moneys apportioned by the commissioners of common schools, to the trustees of a district, which shall have remained in the hands of the chamberlain for one year after such apportionment, by reason of the trustees neglecting or refusing to receive the same, shall be added to the moneys next thereafter to be apportioned by the commissioners, and shall be apportioned and paid therewith, and in the same manner.

Apportionment.

§ 3. No school district now formed, or hereafter to be

Restriction.

formed, east of Perry-street, shall have power to hold a district school meeting to vote a tax, or to do any act as a district meeting, nor shall have power to sell or dispose of the district property, without a legislative enactment.

District
clerks to be
appointed

§ 4. It shall be the duty of the trustees of each school district east of Perry-street to appoint one of their number clerk of the district, who shall record their proceedings in a book to be provided for that purpose, and to enter therein true copies of all reports made by the trustees of the district to the commissioners of common schools; and to keep an account of all moneys received, and how expended. It shall likewise be the duty of the clerk to keep and preserve all records, books and papers belonging to his office, in like manner, and subject to the same penalties as are prescribed by law in relation to town clerks.

Act to take
effect.

§ 5. This act shall take effect immediately on the passage thereof.

SCHENECTADY.

Art. 7, title 2, chap. 15, part 1, R. S.

Apportion-
ment of
school mo-
ney allowed
to Schenec-
tady.

§ 190. [Orig. sec. 1.] The amount of moneys allowed to the city of Schenectady, by the superintendent of common schools, shall be apportioned by the treasurer of the county of Schenectady, between the Schenectady Lancaster school society, and such common school districts and parts of districts as now are or hereafter may be organized without the bounds of the compact part of the city of Schenectady, called the police; and in a ratio proportioned to the number of children over the age of five and under sixteen years within such compact part, and the number of such children in such districts and parts of districts respectively, without such compact part.¹

Duty of
county
treasurer.

§ 191. [Orig. sec. 2.] The treasurer of the county of Schenectady, shall pay the amount thus apportioned to the Schenectady Lancaster school society, to its treasurer, for the use of said society, and the amount thus apportioned to such school districts and parts of districts, to the commissioners of common schools for the several wards of the city of Schenectady.¹

Of school
commis-
sioners.

§ 192. [Orig. sec. 3.] The commissioners of common schools for the several wards of the said city, shall distribute and pay to the trustees of such school districts and parts of districts, the amount so received by them

(1) Laws of 1829, chap. 324.

from the county treasury, in proportion to the number of children residing in each, over the age of five and under that of sixteen years, as the same shall have appeared from the last annual report of their respective trustees.¹

§ 193. [Orig. sec. 4.] The assessors of the several Of assessors wards of the city of Schenectady, shall every year in their respective wards, take a census of the children between the ages of five and sixteen years, residing within the compact part of said city, and shall between the first day of May and the first day of October, in each year, make and transmit a report of the same to the clerk of the county of Schenectady.¹

§ 194. [Orig. sec. 5.] The reports required by law to School trustees. be made by the trustees of the common school districts and parts of districts, without the bounds of the compact part of the city of Schenectady, to the commissioners of common schools, for the several wards of the said city, shall be verified by the affidavit of the said trustees.¹

§ 195. [Orig. sec. 6.] The moneys received by the treasurer of the county of Schenectady, from taxes collected in said city, under the laws relative to common schools, shall be apportioned by him between such common school districts and parts of districts, without the bounds of the compact part of said city, and the Schenectady Lancaster school society, in the ratio proportioned to the amount of the assessments of the real and personal estates of the taxable inhabitants residing in such districts and parts of districts, and the assessments of all real estate situate therein and owned by persons residing out of such districts and parts of districts, and the amounts of the assessments of the real and personal estates of all the taxable inhabitants of the city, after deducting thereout the aggregate of the assessments last mentioned.¹

§ 196. [Orig. sec. 7.] The treasurer of the county of To whom to be paid by treasurer. Schenectady shall pay the amount apportioned by virtue of the last preceding sections to the Schenectady Lancaster school society, to its treasurer, for the use of said society, and the amount apportioned under said sections to such school districts and parts of districts, to the commissioners of common schools for the several wards of said city, which amount so paid to the said commission-

(1) Laws of 1829, chap. 324.

How distributed.

Abstracts of assessment rolls to be furnished by assessors.

Territory to be divided by commissioners.

Annual reports of Lancaster schools.
* 495

ers, shall be distributed and paid by them in the manner provided in the third section of this act.¹

§ 197. [Orig. sec. 8.] To enable the treasurer of said county to make the apportionment required by the sixth section of this act, the assessors of the several wards of the city of Schenectady shall annually, within the time limited in the fourth section of this act, for taking the census therein mentioned, make out and deliver to the treasurer of said county, an abstract from the assessment rolls of their respective wards, containing the names and the amounts of the assessments, of the real and personal estates of each of the taxable inhabitants residing in the said school districts or parts of districts, together with the amount of the assessments of all real estate situate therein, and owned by persons residing out of such districts or parts of districts.¹

§ 198. [Sec. 151.] The commissioners of schools of the city, shall divide that portion of the territory of the first and second wards of the city, not comprised within the bounds of the police, into such number of school districts, as they may deem convenient, and may alter and regulate such districts, according to the provisions of this Title; and the provisions of this Title shall apply to all districts so established.²

§ 199. [Sec. 152.] It shall be the duty of the trustees of the Lancaster school in the city of Albany, of the corporation of the city of Hudson, "and of the trustees of the Schenectady Lancaster school society, to make an annual report to the superintendent of common schools, in such form as shall be prescribed by him, of the state and condition of the schools for whose benefit the school moneys shall have been applied in the cities of Albany, Hudson and Schenectady."³

POUGHKEEPSIE.

Art. 7, title 2, chap. 15, part 1, R. S.

Poughkeepsie village a school district.

§ 200. The village of Poughkeepsie shall form a permanent school district, not subject to alteration by the commissioners of common schools for the town in which said village is situated.⁴

School money how to be paid.

§ 201. The school moneys which the above permanent district shall from time to time, be entitled to receive from the commissioners of common schools in said

(1) Laws of 1829, chap. 324. (2) Laws of 1827, p. 156, § 1. (3) Laws of 1819, p. 257, § 16; 1822, p. 287, § 3. (4) Sections 200, 201 & 202 were substituted by chap. 284, laws of 1830, for orig. § 153, 154 & 155, and section 203, was added by the same chapter.

town, shall be paid to the trustees of the Poughkeepsie Lancaster school society.¹

§ 202. The trustees of the above society shall be so far considered the trustees of the said permanent district, that they shall be bound to report to the commissioners of common schools in said town, the number of children over the age of five and under sixteen years, in said district.¹ Trustees to report.

CATSKILL.

Art. 7, title 2, chap. 15, part 1, R. S.

§ 203. The commissioners of common schools for the town of Catskill, are hereby directed to pay over from time to time, to the trustees of school district number one in said town, the school moneys which said district may be entitled to.¹ Catskill school district No. 1.

UTICA.

Art. 7, title 2, chap. 15, part 1, R. S.

§ 204. [Sec. 156.] The treasurer of the county of Oneida shall pay to the treasurer of the village of Utica, the proportion of school moneys apportioned by the superintendent of common schools to the town of Utica, to be expended by the trustees of the village, for the support of a free school in the same, for the education of such poor children therein, as shall, in the opinion of the board of trustees, be entitled to gratuitous education.² Utica; school moneys how paid.

§ 205. [Sec. 157.] The village of Utica shall form one school district; and the trustees of the village shall make an annual report to the clerk of the county of Oneida, within the same period that other district reports are to be made, of the number of children in said village over the age of five and under sixteen years, and of the state and condition of their schools; and shall account to the treasurer of the county of Oneida, for the moneys paid to them.² Trustees of village to report and account.

§ 206. [Sec. 158.] The trustees of the village of Utica, shall have power annually to cause to be raised and levied on the inhabitants thereof, such sum of money not exceeding one hundred dollars, as shall, in the opinion of the trustees, be sufficient to keep the school-house erected for said free school in repair, and to purchase fuel and other appendages therefor; which sum shall be collected, in addition to the sums authorized to be raised in said village, by adding to the tax assessed To raise tax for repairs and fuel.

* 496

(1) Sections 200, 201 & 202 were substituted by chap. 204, laws of 1830, for orig. § 153, 154 & 155, and section 203, was added by the same chapter. (2) Laws of 1817, p. 225, § 27 & 29.

on each inhabitant his due proportion, according to the last previous assessment of the real and personal property of the inhabitants; which additional sum shall be collected by the collector of said village, as other village taxes are collected.¹

Trustees
may estab-
lish schools,
&c.

§ 207. The trustees of the village of Utica may establish so many common schools in said village, as in their opinion the purposes of education may require, and may distribute the money received from the common school fund among such schools, in such manner as they shall deem most useful.²

Chap. 19, Laws of 1832.—Passed February 13.

School
money.

§ 65. That out of the moneys appropriated from the common school fund to the county of Oneida, the city of Utica shall have its proportion with other towns in said county, which money shall be paid by the treasurer of said county, to the treasurer of said city, and be subject to the order of the common council. The common council shall have power to establish so many common and free schools in said city, as in their opinion the purposes of education may require, and shall distribute the money received from the common school fund, among such schools, and in such manner and proportions as they shall deem most useful.

Repeal.

§ 69. All former acts and parts of acts, relative to the incorporation of the village of Utica, are hereby repealed; but the repeal of said acts shall not affect any act done, or right accrued or established, or any proceeding, suit or prosecution had or commenced previous to the time when such repeal shall take effect; but every such act, right and proceeding, shall remain as valid and effectual as if said acts had remained in force; and all the officers elected or appointed under or by virtue of the acts hereby repealed, shall continue in office until and including the Monday next after the first Tuesday in March next, unless the term for which they, or any of them, were elected or appointed, shall sooner expire.³

FLATBUSH.

Art. 7, title 2, chap. 15, part 1, R. S.

Flatbush
moneys paid
to academy.

§ 208. [Sec. 159.] The school moneys appropriated to that part of the town of Flatbush, commonly called "the Old Town," excepting such portion thereof as may

(1) Laws of 1817, p. 225, § 27 & 29. (2) Laws of 1831, chap. 136. (3) By the 64th section of this act, it is provided that the said city shall, for all the purposes contemplated by the statute entitled, "Of Common Schools," be "considered one of the towns of the county of Oneida."

be applicable to the instruction of children living on the borders of the old town, and sent to school to the adjoining towns, shall be annually paid, by the several officers whose duty it shall be to pay the same, to the trustees of the Academy of Erasmus Hall.¹

§ 209. [Sec. 160.] The trustees receiving such moneys shall give their receipt therefor, and shall apply the moneys received to the education of such poor children living in "the old town" and sent to the academy, as in their opinion shall be entitled to a gratuitous education.¹ How applied.

§ 210. [Sec. 161.] The trustees of the academy shall account to the commissioners of common schools of the town of Flatbush, for the faithful application of the school moneys received by them, and shall make an annual report to the same commissioners on the first day of May in each year, of the progress and number of the children of "the old town" so taught in the academy.¹ How accounted for.

FLUSHING.

Art. 7, title 2, chap. 15, part 1, R. S.

§ 211. [Sec. 163.] The commissioners of common schools of the town of Flushing shall pay to the managers of the Free School Association, in school district number five, the school moneys apportioned to said district so long as no common school is taught in said district according to the general provision of law.² Flushing :
Free school
association.

§ 212. [Sec. 164.] The managers of the free school association in such school district shall make an annual report to such commissioners, within the same period that other district school reports are to be made, of the number of children in the district over the age of five and under sixteen years, and of the state and condition of their school; and shall account to such commissioners for the moneys paid to them.² To make annual report,
&c.

COVERT AND OVID.

Art. 7, title 2, chap. 15, part 1, R. S.

§ 213. It shall be the duty of the commissioners of common schools in the towns of Covert and Ovid, county of Seneca, to meet in some convenient place in said towns, on or before the first Tuesday of June in each year, to apportion their public school money to the several districts in said towns.³ Covert and
Ovid, Seneca
county.

(1) Laws of 1814, p. 91; orig. sec. 162 repealed by chap. 138, laws of 1835. (2) Laws of 1818, p. 121. (3) Laws of 1829, chap. 336.

GATES AND BRIGHTON.

Art. 7, title 2, chap. 15, part 1, R. S.

Coloured
children in
Gates and
Brighton.

§ 214. The commissioners of common schools of the towns of Gates and Brighton, in the county of Monroe, or a majority of them, may in their discretion cause the children of colour of the village of Rochester to be taught in one or more separate schools.¹

It

§ 215. The commissioners of common schools of the towns of Gates and Brighton, shall discharge the duties of trustees of such school, and shall apportion thereto a distributive share of the moneys for the support of common schools.¹

ROCHESTER.

Title 6, of chap. 199, laws of 1834.—Passed April 128.

Commis-
sioners of
common
schools.

§ 1. The mayor, aldermen and assistants of the city of Rochester, shall, by virtue of their offices, be commissioners of common schools in and for the said city, and in common council shall perform all the duties of such commissioners, and shall have and possess all the rights, powers, and authority of commissioners of common schools in the several towns of this state. The clerk of the city shall be the clerk of the said commissioners, and shall perform all the duties enjoined by law upon the clerks of commissioners of common schools in the several towns of this state.

School tax
how to be
raised.

§ 2. The moneys required by law to be raised by tax for the support of common schools shall be levied and raised in the city of Rochester by the supervisors of the county of Monroe, in the same manner as such taxes are directed to be raised in the several towns in the county of Monroe; and the amount raised in the said city shall be paid to the treasurer thereof: and directions to that effect shall be given in the warrants delivered to the collectors in the said city, and the sum apportioned to the said city by the superintendent of common schools shall be paid to the treasurer of the said city by the treasurer of Monroe county.

Additional
sums.

§ 3. The common council shall have the same power to raise any additional sum for the support of common schools, as is given by law to the towns of the state; which shall be assessed, levied and collected, and paid

(1) Laws of 1832, chap. 136. By the act to incorporate the Rochester High School, laws of 1827, chap. 70, p. 56, districts four and fourteen in Brighton, are united into one and placed under the charge of the trustees of the high school,

into the city treasury, in the same manner as the sums raised to defray the general expenses thereof.

§ 4. The moneys so paid into the city treasury shall be distributed among the several school districts therein, by the common council, in the same manner prescribed by law in relation to the distribution of common school moneys among the districts of towns, and the said common council shall receive and make the several returns and reports required by law of commissioners of common schools in towns, and the members thereof shall be individually liable for any neglect of duty in the premises, in the same manner as town commissioners of schools.

Distribution
of school
money.

§ 5. The common council shall annually appoint a number of inspectors of common schools in the said city, not exceeding twelve, and not less than five, who shall possess all the powers and authority of inspectors of common schools elected by any town, and shall be subject to the like duties and obligations. In case of the refusal of any person so appointed to serve, or in case of a vacancy in the office, the common council shall, from time to time, appoint others, who shall have the like powers and be subject to the same duties.

School
inspectors.

§ 6. The freeholders and inhabitants of any school district in the said city may, by a vote of two-thirds of the persons present, and entitled to vote at any meeting of such district convened after notice of the object of such meeting shall have been published for one week in some newspaper of the said city, and after the said notice shall have been served on every such freeholder or inhabitant, by reading the same to him, or in case of his absence, by leaving the same at his place of residence, at least five days previous to such meeting, determine either separately or in conjunction with any other school district or districts in the said city, to have a high school created for such district or districts as shall so agree to unite for that purpose; and may vote a sum, not exceeding five thousand dollars, to be raised for erecting a building for such high school; and on evidence of such vote, and of such notice having been published and served as above provided, being presented to the common council, they may, in their discretion, authorize the erection of a high school in such district, or may authorize the several districts so agreeing to be erected in one district, which shall thereafter form one school district; and all the property, rights and interests of the several districts so united shall belong to, and be vested in,

High schools
may be cre-
ated.

the trustees of the said united districts; and the trustees thereof shall have all the powers of trustees of school districts; shall be elected in the same manner, and shall be subject to all the duties and obligations of trustees of common school districts.

School houses.

§ 7. Upon such authority being given, the trustees of such district shall proceed to raise the sum which shall have been voted at such district meeting or meetings for the erection of a building, in the same manner that moneys voted by school districts to build school-houses, are directed by law to be raised; and the same proceedings shall be had in all respects; and the moneys so raised shall be expended by the trustees and accounted for by them to the common council.

Rights and privileges.

§ 8. Such school district shall have all the rights, privileges and benefits of a common school district, and the freeholders and inhabitants thereof may vote a sum not exceeding seventy-five dollars in each year, to be raised for the purpose of keeping such building in repair, which shall be assessed and collected in the same manner as sums voted by district meetings for the repair of school-houses, are directed by law to be raised and collected.

Rochester high school.

§ 9. The three last preceding sections shall not extend to any school district in which there is now a high school, or which is attached to the Rochester high school.

To make reports.

§ 10. It shall be the duty of the trustees of the Rochester high school to make the reports and returns which by law they are required to make as trustees of a school district, to the common council, as commissioners of common schools.

Number of schools to be published yearly.

§ 11. The common council shall annually publish in some newspaper of the city, a statement of the number of high schools and common schools in the said city; the number of pupils instructed therein the year preceding; the several branches of education pursued by them; and the receipts and expenditures of each school, specifying the sources of such receipts, and the objects of such expenditures.

BROOKLYN.

Chap. 92, laws of 1834.—Passed April 8.

Overseers of the poor.

§ 65. There shall be elected in the city, at the annual city election to be held therein, by general election of the electors of the several wards, three overseers of the poor, two of whom shall be taken from the portion of the city constituting the first seven wards, and the other from the portion thereof constituting the eighth

and ninth wards. There shall also be elected in like manner, three commissioners and three inspectors of common schools, one of which commissioners and one of which inspectors shall be taken from the last mentioned portion, and the others from the first mentioned portion of the city. All the provisions of the Revised Statutes, and of any acts amendatory thereof, in relation to the relief and support of indigent persons and of common schools, which now apply to the town or village of Brooklyn, shall be deemed to apply to the city of Brooklyn. The common council shall be and are hereby constituted a board of auditors in lieu of the board of town auditors, and they shall have power to require the exhibition and rendering of books and accounts to them from time to time.

Chap. 129, laws of 1835.—Passed April 23.

§ 15. The law, in relation to the common schools now established or hereafter to be established in the said city, shall be so far altered and changed, that the common council of the said city shall have the power to appoint annually on the first Tuesday of February, in each school district now laid out, or hereafter to be laid out in the said city, three trustees of common schools, and for the whole city, three inspectors and three commissioners of such schools; and that from and after the passage of this act, no trustees, inspectors or commissioners of common schools shall be elected in the said city; but those already elected shall hold their respective offices until others are appointed in their place and have taken the oath which may be required by law; and that all the legal and statutory provisions in relation to trustees, inspectors and commissioners of common schools now in existence, or hereafter to be passed or enacted, shall extend and apply to and govern the said trustees, inspectors and commissioners of common schools to be appointed as aforesaid under this act, except so far as the same may be changed or modified by the provisions of this act.

Common schools.

§ 16. The trustees of the respective school districts in the city shall, on or before the first day of July in each year, report to the common council such amount of money as they shall deem necessary for the support of the common schools in their respective districts for the current year, not exceeding eight hundred dollars for each district beyond the sum necessary to entitle said district to a distributive share of the common school fund, and

Trustees to report.

such amount, when approved of by the common council, shall be assessed and levied on all the taxable property within the city in the same manner as the other taxes for the various public purposes of the city are assessed and levied; and the same shall be collected by the collectors of taxes in the city in the same manner as the other taxes of the city are collected, (a separate column being made in their books for this purpose,) and shall be paid by them to the commissioners of common schools in the city, to be by them distributed to and among the trustees of each district in proportion to the amount collected for each of said districts; and for the purpose of enforcing the collecting of the same, the collectors are hereby invested with the same power which they now have, and may at any time hereafter have, to enforce the collection for the other taxes of the city.

Chap. 93, laws of 1836.—Passed April 2.

School
houses.

§ 1. The supervisors and the common council of the city of Brooklyn, shall have power at their annual joint meeting, to determine what sums in addition to that which they determine to be raised for the various public purposes of the said city, is necessary to be raised for the purchase of a suitable site for a school or school-houses in any of the school districts in said city, and for the building of a suitable school-house or school-houses, in any of the said districts; which sum or sums shall be assessed, levied and collected upon the taxable property within the school districts respectively, where such school-house shall be built, in the same manner as the other taxes of the said city are assessed, levied and collected, (a separate column being made in the assessment rolls for this purpose) and shall be paid by the said collector to the commissioners of common schools in and for said city, to be by them distributed to the trustees of each district, according to the amount collected in and for each of said districts; and for the purpose of enforcing the collecting of the same, the collectors of the said city are hereby invested with the same power which they now have, and may at any time hereafter have, to enforce the collection of the other taxes of the said city.

NEWBURGH.

Chap. 144, laws of 1835.—Passed April 23.

School for
black child-
ren.

§ 1. It shall be lawful for the trustees of school district number thirteen in the town of Newburgh, known

also as the trustees of the Newburgh High School, to establish and keep a school for the instruction of black children, separate and apart from their high school, and to employ competent teachers to take charge of such school.

§ 2. The said trustees shall set apart for the payment of the compensation to such teachers, so much of the public moneys received by them, as shall bear the same proportion to the whole sum, as the number of black children annually reported to the commissioners of common schools in said town, as resident in said district, shall bear to the whole number of children reported by said trustees. ^{Pay of teachers.}

§ 3. The said trustees in disbursing the moneys so set apart for said school, shall be subject to all the restrictions and provisions contained in the act relative to common schools. ^{Restrictions.}

GENERAL PROVISION.

Art. 7, title 2, chap. 15, part 1, R. S.

§ 223. [Sec. 165.] In all cases where no special provision is made, the general provisions, regulations and penalties of this Title shall be construed to apply to the several cities, villages and towns, to which this Article relates, and to their several commissioners and inspectors of common schools, and trustees and collectors of school districts. ^{Application of this Title.}

AMENDMENTS.

Chap. 241, laws of 1837.—Passed April 22.

§ 1. It shall be the duty of trustees of school districts to state in their annual reports, the amount of money paid for teachers' wages in addition to the public money paid therefor, and such other information in relation to the schools and the districts as the superintendent of common schools may from time to time require. ^{Trustees how to report.}

§ 2. It shall be the duty of the commissioners of common schools to state in their annual reports the amount of money paid for teachers' wages in addition to the public money paid therefor, in the districts, parts of districts, and neighborhoods from which reports shall have been received by them or their immediate predecessors in office, with such other information as the superintendent of common schools may from time to time require, in ^{Commissioners how to report.}

relation to the districts and schools within their town.

Penalty for neglect.

§ 3. Commissioners who neglect to furnish the information required by the last preceding section, shall severally forfeit to their town, for the use of the common schools therein, the sum of ten dollars, to be sued for by the supervisor of the town.

Certain academies to report about common school teachers.

§ 4. The institutions in which departments for the instruction of common school teachers are or shall be established, shall make to the superintendent of common schools an annual report of the condition of those departments, in such form and containing such information as he may from time to time require; and in respect to the organization and management of the departments and the course of studies therein, the said institutions shall be governed by such direction as he may prescribe; and he may direct the said forms and direction to be printed by the state printer.

Pay of commissioners.

§ 5. Commissioners of common schools shall be entitled to receive one dollar per day for every day actually and necessarily devoted by them in their official capacity to the service of the town for which they may be chosen, the same to be paid in like manner as other town officers are paid.

Book of minutes may be purchased.

§ 6. The inhabitants of school districts shall have power, whenever they shall be lawfully assembled at any district meeting, to vote a tax for the purchase of a book for the purpose of recording the proceedings of their respective districts.

TOWN SCHOOL FUND.

AN ACT relative to moneys in the hands of overseers of the poor.

Passed April 27, 1829.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

Money how to be appropriated.

§ 1. It shall be lawful for the inhabitants of any town in such counties as have abolished the distinction between county and town paupers, and in such counties as may hereafter abolish such distinction, at any annual or special town meeting to appropriate all or any part of the moneys and funds remaining in the hands of the overseers of the poor of such town after such aboli-

tion, to such objects, and for such purposes, as shall be determined on at such meeting.

§ 2. If any such meeting shall appropriate such money or funds for the benefit of common schools in their town, the money so appropriated shall be denominated "The common school fund of such town," and shall be under the care and superintendence of the commissioners of common schools of said town. School fund.

§ 3. If any such meeting shall appropriate such money or funds for the benefit of common schools, after such appropriation shall have been made, and after the commissioners of common schools shall have taken the oath of office, the overseers of the poor of such towns shall then pay over and deliver to the said commissioners, such moneys, bonds, mortgages, notes and other securities, remaining in their hands as such overseers of the poor, as will comport with the appropriation made for the benefit of common schools of their town. Money and securities to be delivered to school commissioners.

§ 4. The said commissioners of common schools may sue for and collect in their name of office, the money due or to become due on such bonds, mortgages, notes or other securities, and also all other securities by them taken under the provisions of this act. Suits.

§ 5. The moneys, bonds, mortgages, notes and other securities aforesaid, shall continue and be a permanent fund, to be denominated the common school fund of the town appropriating the same, the annual interest of which shall be applied to the support of common schools in such towns, unless the inhabitants of such town, in annual town meeting, shall make a different disposition of the whole of the principal and interest, or any part thereof, for the benefit of the common schools of such town. Permanent school fund

§ 6. The said commissioners of common schools whenever the whole or any part of the principal of said fund shall come to their hands, shall loan the same on bond, secured by a mortgage on real estate of double the value of the moneys so loaned, exclusive of buildings or artificial erections thereon. Loans on bond and mortgage.

§ 7. The said commissioners of common schools may purchase in the estate on which the fund shall have been secured, upon the foreclosure of any mortgage, and may hold and convey the same for the use of said fund. Foreclosure of mortgages

§ 8. The said commissioners of common schools shall retain the interest of said common school fund, which shall be distributed and applied to the support of common schools of such town, in like manner as the public Interest how to be applied

money for the support of common schools shall be distributed by law.

Commissioners to account annually.

§ 9. The said commissioners of common schools shall account annually, in such manner and at such time as town officers are required by law to account, and shall deliver to their successors in office all moneys, books, securities and papers whatsoever, relating to said fund, and shall take a receipt therefor, and file the same with the town clerk.

Lots reserved for the support of the Gospel and Schools, and the funds arising therefrom.

The acts passed in 1789, for the sale of lands belonging to the people of this state, required the surveyor-general to reserve in each township, one lot for the support of the gospel and one lot for the use of schools in such township. 3d R. S. p. 242.

The following is a list of the principal reservations of this nature, viz :

One lot of 550 acres in each of the 28 townships in the military tract.

Forty lots of 250 acres each in the twenty townships west of the Unadilla river, being 10,000 acres.

One lot of 640 acres in each of the townships of Fayette, Clinton, Greene, Warren, Chenango, Sidney and Hampden, in the counties of Broome and Chenango.

Ten lots of 640 acres each in the townships along the St. Lawrence.

Sixteen lots of 640 acres each in Totten and Croesfield's purchase.

In the township of Plattsburgh 400 acres were reserved for the use of a minister of the gospel, and 460 acres for the use of a public school or schools in the said township.

In the township of Benson 640 acres were reserved for gospel and schools.

By an act passed in 1798, in relation to gospel and school lots, it is provided, sec. 3, "That the moneys arising from the leasing of the said lots of land as aforesaid, and from the trespasses aforesaid, shall be applied to the use of schools or support of the gospel, in the original townships as surveyed, in which such lots shall be respectively situated, and for no other purpose; which said application shall be made either for schools or gos-

pel, or both, and in such way and manner as the freeholders and inhabitants of the towns in which the same lands shall lie, shall in legal town meeting from time to time direct, order and appoint." 3d R. S. p. 244.

By an act passed in 1808, the act of 1798 was extended to all the townships where lots of land are reserved for the support of gospel and schools, and the following provision was added :

"§ 1. *Be it enacted, &c.* That the moneys arising from the annual rents and profits of the gospel lots in each township, shall be equally divided by the supervisor and commissioners appointed in each township, between the several religious societies legally organized in such township, and that the moneys arising from the annual rents and profits of the several school lots shall be distributed among the schools kept in each respective township by teachers to be approved of by the supervisor and commissioners constituted by the act to which this is an amendment, or a majority of them, in said township, in proportion to the aggregate number of days which the scholars in each respective school shall have respectively attended such schools in the year immediately preceding such division." 3d R. S. p. 245.

The fourth section of an act concerning the gospel and school lots, passed in 1813, is as follows :

"*And be it further enacted,* That the rents, issues and profits of the aforesaid lands, and the annual interest of the moneys arising from the sale thereof, shall be applied by the said trustees for the time being, to the support of the gospel and schools in their several towns in such manner as the freeholders and inhabitants of the towns respectively, at their annual town meeting, shall order and direct, or as the legislature shall prescribe by law." Session Laws of 1813, p. 157.

In 1819 an act was passed in relation to the gospel and school lots, which contains the following section :

"§ 2. *And be it further enacted,* That all moneys now due or hereafter to become due, and which shall have come into the hands of the aforesaid commissioners of public lots, and have not been applied and paid over to religious societies, shall be apportioned among the several school districts in the several towns in the

aforementioned counties,* any thing in the acts heretofore passed to the contrary notwithstanding." 3d R. S. p. 245.

The following are the provisions adopted in the Revised Statutes, in relation to the gospel and school lots, the powers and duties of the trustees of those lots, and the funds arising from them :

TITLE IV. CHAPTER XV. † R. S. p. 497.

OF THE GOSPEL AND SCHOOL LOTS.

Sec. 1. Trustees of gospel or school lots, a corporation for certain purposes.

2. Such trustees to give bond.

3. Their powers and duties.

4. Auditors of town to report upon accounts of trustees of gospel and school lots.

5 & 6. Lands and money arising therefrom, how disposed of upon division of town.

7. When the share of any town is to be paid to supervisor, &c.

Trustees a
corporation.

§ 1. The trustees elected in any town in this state, having lands assigned to it for the support of the gospel or of schools, or of both, shall be a corporation for the purposes of their office, by the name of "The trustees of the gospel and school lot," in that town for which they are elected.

To give
bonds.

§ 2. Before they enter on the duties of their office, they shall execute a bond to the supervisor of the town, in such penalty and with such sureties as such supervisor shall approve, for the faithful performance of such duties.

Their pow-
ers and du-
ties.

§ 3. The trustees, besides the ordinary powers of a corporation, shall have power, and it shall be their duty,

1. To take and hold possession of the gospel and school lot of their town :

2. To lease the same for such time not exceeding twenty-one years, and upon such conditions, as they shall deem expedient :

3. To sell the same with the advice and consent of the inhabitants of the town, in town meeting assembled, for such price and upon such terms of credit as shall appear to them most advantageous :

4. To invest the proceeds of such sales in loans, secured by bond and mortgage upon unincumbered real property of the value of double the amount loaned :

* NOTE.—The counties named in the act, are Onondaga, Cayuga and Seneca. See also act of 1807, p. 329, Session Laws of that year.

5. To purchase the property so mortgaged upon a foreclosure, and to hold and convey the property so purchased whenever it shall become necessary:

6. To reloan the amount of such loans repaid to them, upon the like security.

7. To apply the rents and profits of such lots, and the interest of the money arising from the sale thereof, to the support of the gospel and schools, or either, as may be provided by law, in such manner as shall be thus provided:

8. To render a just and true account of the proceeds of the sales and the interest on the loans thereof, and of the rents and profits of such gospel and school lots, and of the expenditure and appropriation thereof, on the last Tuesday next preceding the annual town meeting in each year, to the board of auditors of the accounts of other town officers:

9. To deliver over to their successors in office, all books, papers and securities relating to the same, at the expiration of their respective offices; and,

10. To take therefor a receipt, which shall be filed in the clerk's office of the town.

§ 4. The board of auditors in each town shall annually report the state of the accounts of the trustees of the gospel and school lots in that town, to the inhabitants thereof, at their annual town meeting. Accounts.

§ 5. Whenever a town having lands assigned to it for the support of the gospel or of schools, shall be divided into two or more towns, or shall be altered in its limits by the annexing of a part of its territory to another town or towns, such lands shall be sold by the trustees of the town in which such lands were included, immediately before such division or alteration; and the proceeds thereof shall be apportioned between the towns interested therein, in the same manner as the other public moneys of towns, so divided or altered, are apportioned. Lands of town divided

§ 6. The shares of such moneys to which the towns shall be respectively entitled, shall be paid to the trustees of the gospel and school lots of the respective towns, and shall thereafter be subject to the provisions of this Title. Shares to whom paid.

§ 7. If in either of such towns, trustees of gospel and school lots shall not have been chosen, or there be none in office, the share of such town shall be paid to the supervisor; and the town, at its next annual town meeting, and annually thereafter, shall choose such trustees in the same manner as if gospel and school lots had ori-

ginally been assigned to it; which trustees shall have charge of the moneys so paid to the supervisor, and shall be subject to all the duties and liabilities, and possess all the powers imposed or conferred in this Title.

FORMS, REGULATIONS, &c.

RESIGNATIONS.

[Reference from Sec. 83.]

The provision referred to in this section is as follows :

"Any three justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town." Sec. 33, Title III. Chap. XI. 1 R. S. 348.

They may do the same as to officers of school districts, and must notify the clerk, or a trustee of the district, of such resignation.

ASSESSMENT OF TAXES.

[Reference from Sec. 94.]

The following are the provisions referred to in this section, and are extracted from Chapter XIII, Title II., which relates to the assessment and collection of taxes : (p. 392, 1 R. S.)

"§ 15. If any person, whose real or personal estate is liable to taxation, shall at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estate does not exceed a certain sum, to be specified in such affidavit ; or that the value of the personal estate owned by him, after deducting his just debts, and his property, invested in the stock of incorporated companies, liable under this Chapter to taxation on their capital, does not exceed a certain sum, to be specified in the affidavit, it shall be the duty of the assessors to value such real or personal estate, or both, as the case may be, at the sums specified in such affidavit, and no more."

"§ 16. If any trustee, guardian, executor or administrator, shall specify, by affidavit, the value of the property possessed by him, or under his control, by virtue of such trust, after deducting the just debts due from him, and the stock held by him in incorporated companies liable to taxation, in that capacity, the assessors shall in like manner value the same at the sum specified in such affidavit."

"§ 17. All real and personal estate liable to taxation, the value of which shall not have been specified by the affidavit of

the person taxed, shall be estimated by the assessors at its full value, as they would appraise the same in payment of a just debt, due from a solvent debtor."

After completing the assessment roll, section 19 provides that the assessors "shall make out one fair copy thereof, to be left with one of their number. They shall also forthwith cause notices thereof to be put up at three or more public places in their town or ward."

"§ 20. Such notices shall set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number, to be designated in such notice, at some place to be specified therein, where the same may be seen and examined by any of the inhabitants of the town or ward during twenty days; and that the assessors will meet on a certain day, at the expiration of such twenty days and at a place to be specified in such notice, to review their assessments, on the application of any person conceiving himself aggrieved."

"§ 21. The assessor with whom such assessment roll is left, shall submit the same, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose."

"§ 22. The assessors shall meet at the time and place specified in the notice, and on the application of any person conceiving himself aggrieved by their assessment, shall review such assessment. And when the person objecting thereto, shall not previously have made affidavit concerning the value of his property, pursuant to the fifteenth and sixteenth sections of this Title, the assessors shall, on the affidavit of such person, made as provided in those sections, reduce their assessments to the sum specified in such affidavit."

"§ 23. If the person objecting to the assessment can show by other proof than his own affidavit, to the satisfaction of the assessors, or of a majority of them, that such assessment is erroneous, the assessors shall review and alter the same, without requiring any such affidavit."

"§ 24. Where any person in possession of personal property liable to taxation, shall make affidavit that such property, or any part thereof, specifying what part, is possessed by him as agent for the owner thereof, and shall disclose in such affidavit the name and residence of the owner, the assessors, if it shall appear that such owner is liable to be taxed under this Chapter, shall not include such personal estate in the assessment of the property of such possessor."

"§ 25. The affidavit specified in this Article, shall be made before the assessors, or one of them, either of whom is hereby authorized to administer an oath for that purpose; and the as-

essors shall cause all such affidavits to be filed in the office of the town clerk."

Form of a District Tax list, and Warrant.

List of taxes payable by the following persons, taxable inhabitants of district No. _____ in the town of _____ made by the trustees of said district on the _____ day of _____ 18____ in conformity to law.

NAME.	Valuation of real estate.	Personal estate.	Total property.	Amount of taxes.	Collector's fees 5 per cent	Total amount to be collected
A. B...	\$1,000	\$200	\$1,200	\$6.00	\$0.30	\$6.30
C. D...	1,500	500	2,000	10.00	0.50	10.50
E. F...	2,000	800	2,800	14.00	0.70	14.70

County of _____ ss.

To the collector of school district No. _____ in the town of _____ in the county aforesaid, GREETING:

In the name of the people of the state of New-York, you are hereby commanded and required, to collect from each of the inhabitants in the annexed tax list named, the sum of money set opposite to his name, in said list, and within thirty days after receiving this warrant, to pay the amount thereof collected by you, (retaining five per cent. for your fees,) into the hands of the trustees of said district, or one of them, and take his or their receipt therefor: And if any of the said inhabitants shall not pay such sum on demand, you are hereby further commanded, to levy the same by distress and sale of the goods and chattels of the said delinquent, in the same manner as on warrants issued by the board of supervisors to the collectors of towns.

Given under our hands and seals, this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

A. B. [L. s.] }
C. D. [L. s.] } Trustees.
E. F. [L. s.] }

[The tax list must be made out within one month after the district meeting in which the tax was voted.]

Form of a District Rate Bill.

Rate bill of the persons liable for teacher's wages in district
 No. in the town of for the school term
 ending 18 .

NAMES.	No. of days sent.	Amount of school bill.	Collector's fees, 5 per cent	Total amount to be collected.
A. B.....	80	\$1.00	\$0.05	\$1.05
C. D.....	90	1.12 $\frac{1}{4}$	0.05 $\frac{1}{4}$	1.18 $\frac{1}{4}$
E. F.....	100	1.25	0.06 $\frac{1}{4}$	1.31 $\frac{1}{4}$

[The warrant to be annexed to a rate bill, is to be, similar in form to the warrant annexed to a tax list, as above, excepting that the words "rate bill" will be substituted for the words "tax list," or "list," whenever the two latter occur.]

[In executing the warrant, the collector will be governed by the following sections of chapter 13, pages 397 and 398, 1 R. S.]

§ 1. Every collector, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at the place of his usual residence, if in the town or ward for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

§ 2. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, where-soever the same may be found within the district of the collector, and no claim of property to be made thereto by any other person shall be available to prevent a sale.*

§ 3. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in at least three public places in the town where such sale shall be made. The sale shall be by public auction.

§ 4. If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus on the ground that the property sold belonged to him, and such claim be admitted

* NOTE.—"No replevin shall lie for any property, taken by virtue of any warrant for the collection of any tax, assessment or fine, in pursuance of any statute of this state." 2d R. S. page 522, sec. 4.

by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus moneys shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties shall be determined by due course of law. 1 R. S. page 397, 398.

Form of a Bond to be given by a District Collector.

Know all men by these presents, that we, A. B. and C. D. (the collector and his surety,) are held and firmly bound to E. F. and G. H. &c., trustees of school district number in the town of in the sum of (here insert a sum double the amount to be collected,) to be paid to the said E. F., G. H., &c., trustees as aforesaid, or to the survivor or survivors of them, or their assigns, trustees of said district; to the which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this day of
18 &c.

The condition of this obligation is such, that, whereas the above bounden A. B. has been chosen (or appointed, as the case may be,) collector of the above mentioned school district number in the town of in conformity to the act for the support of common schools; now, therefore, if he the said A. B. shall well and truly collect and pay over, after deducting 5 cents on each dollar as his fees, the moneys assessed upon the taxable inhabitants of said district, in a rate bill or tax list dated the day of and this day received by the said collector, which assessment amounts to a total sum of dollars and cents, and shall in all respects duly and faithfully execute the said warrant, and all the duties of his office as collector of such district, then this obligation shall be void, otherwise of full force and virtue.

Signed, sealed and delivered, A. B. [L. s.]
in the presence of C. D. [L. s.]

[This bond, by section 120, is to be given whenever required by trustees: If not given, by section 121, the office of collector is vacated. By section 117, the trustees are required to deliver this bond to their successors.]

Form of the Apportionment of Fuel, to be made by Trustees, when the same has not been provided by a Tax on the District. [§ 94 and 95.]

We, the trustees of district No. _____ in the town of _____ do certify that each person whose name is hereunto annexed, is liable to provide the proportion of fuel set opposite his name, for the use of the school in said district, viz.

<i>Names.</i>	<i>No. of children sent.</i>	<i>Amount of wood.</i>
A. B.	2 children.	1 cord.
C. D.	4 "	2 "
E. F.	6 "	3 "
Given under our hands at this day of _____		18
A. B. } C. D. } E. F. }		<i>Trustees.</i>

[This apportionment should be recorded by the clerk of the district, and in case of the delinquency of any inhabitant, notice should be given to him by one of the trustees, as required in section 96.]

[To enable the trustees to make this apportionment before the close of the school term, they can ascertain the number of children which each inhabitant proposes to send, or from the best evidence in their power, and make an equitable adjustment of the apportionment, when the term closes.]

Form of a District Report to be made by the Trustees to the Commissioners of Common Schools.

To the commissioners of common schools of the town of _____
We, the trustees of school district number _____ in said town, in conformity with the statute for the support of common schools, do certify and report, that the whole time any school has been kept in our district, during the year ending on the date hereof, and since the date of the last report for said district, is [*here insert the whole time any school has been kept in the district school-house, although for a part of that time it may have been kept by teachers not approved by the inspectors,*] and that the time during said year and since said last report, such school has been kept by a teacher [*or teachers, as the case may be*] duly appointed and approved in all respects according to law is [*here insert the same with precision.*] That the amount of money received in our district from the commissioners of common schools, during the said year, and since the date of the

said last report, is [*here insert the whole amount, although it may have been received in whole or in part by predecessors in office,*] and that the said sum has been applied to the payment of the compensation of teachers employed in said district, and qualified as the statute prescribes. That the number of children taught in said district, during said year and since said last report, is [*here insert the same, not by conjecture, but by reference to the teacher's list, or other authentic sources.*]— And that the number of children residing in our district on the last day of December last, who are over five, and under sixteen years of age, is [*here insert the number, taking in such only as permanently resided in the district on the last day of December, and who were then over five and under sixteen years of age,* [and that the names of the parents, or other persons with whom such children respectively reside, and the number residing with each, are as follows, viz :

Parents, &c.			No. of children.
A. B.	"	"	5
C. D.	"	"	3
E. F.	"	"	2

And we further report, that our school has been visited by the inspectors of common schools, or one of them, during the year preceding this report, [*once in each quarter, or more, or less, or not at all, as the case may be*] and that the sum paid for teachers' wages, over and above the public moneys apportioned to said district, during the same year, amount to \$ cents. [*This blank is to be filled with the sum total of all the school bills for the year which are made out after applying the school money to the payment of teachers' wages.*]

Dated at this first day of January, in the year of our Lord one thousand eight hundred and

A. B.	} Trustees.
C. D.	
E. F.	

[The trustees should hand this report to the town clerk, on or before the first day of March. Sec. 104, 105.]

Form of a District Report, where the District is formed out of two or more adjoining Towns.

To the commissioners of common schools of the town of
We, the trustees of school district number formed part-

ly out of the said town, and partly out of the adjoining town of do, in conformity with the statute for the support of common schools, certify and report,

That the whole time any school has been kept in our district, during the year ending on the date hereof, and since the date of the last report for said district, is [*here insert the whole time any school has been kept in the district school-house, although for a part of that time it may have been kept by teachers not approved by the inspectors.*] and that the time during said year and since said last report, such school has been kept by a teacher [*or teachers, as the case may be*] duly appointed and approved in all respects according to law, is [*here insert the same with precision.*] That the total amount of money received by said district, from the commissioners of common schools of the respective towns out of which said district is formed, since the date of the last annual report of said district, is [*here insert the whole amount, although it may have been received in whole or in part by predecessors in office.*] And that the said sum has been applied to the payment of the compensation of teachers employed in said district and qualified as the statute prescribes. That the number of children taught in said district during said year, and since said last report, is [*here insert the same, not by conjecture, but by reference to the teacher's list, or other authentic sources.*] And that the number of children residing in our district on the last day of December last, who are over five, and under sixteen years of age, is [*here insert the number, taking in such only as permanently resided in the district on said day and who were then over five and under sixteen years of age,*] and that the names of the parents, or other persons with whom such children respectively reside, and the number residing with each, are as follows viz:

<i>Parents, &c.</i>				<i>No. of Children.</i>	
A.	B.	"	"	"	5
C.	D.	"	"	"	3
E.	F.	"	"	"	2

And we do further specify and report, that of the said sum of money, so as above stated to have been received in our said district, the sum of [*here state the same*] was received for and on account of that part of said district lying in the said town of and the sum of for and on account of the other part thereof, lying and being in said town of That of the said children, so as above stated to have been taught in our said district, the number belonging to that part of said district lying in the said town of is and that the number belonging to the other part thereof, lying in the said town of is

That of the said children, between the said ages of five and sixteen years, so as above stated to reside in our district, the number residing in that part of said district lying in the said town of _____ is _____ and that the number residing in the other part thereof, lying in said town of _____ is _____. And we further report, that our school has been visited by the inspectors of common schools, or one of them, during the year preceding this report, [*once in each quarter, or more, or less, or not at all, as the case may be,*] and the sum paid for teachers' wages, over and above the public moneys apportioned to said district, during the same year, amounts to \$ _____ cents, of which sum _____ dollars _____ cents were paid by that part of the district lying in the town of _____ and _____ dollars _____ cents by the part lying in the town of _____. [*This blank is to be filled with the sum total of all the school bills for the year which are made out after applying the school money to the payment of teachers' wages.*]

Dated at _____ this first day of January, in the year of our Lord one thousand eight hundred and _____

A. B. }
C. D. } Trustees.
E. F. }

N. B. A copy of the report must be sent to the commissioners or clerk of each town out of which the district is formed.

DISTRICT MEETINGS.

1. Annual meetings are adjourned from year to year, and notices in the second form which follows, are to be posted up by the clerk, in four public places in the district, five days before the annual meeting.

2. Special meetings are called by order of the trustees, and every taxable inhabitant should be notified of the time, place and object of such meeting, at least five days before it is held, by reading the notice in his hearing, or leaving a copy thereof at his place of abode. Sec. 56 and sub. 2 of 84.

3. If any district meeting is adjourned for more than one month, the clerk must post up notices in four public places, at least five days before the day on which such adjourned meeting is to be held. Sec. 84, sub. 3.

4. A special meeting should not be called without notice to all the trustees, who should confer together, and a major part of them should sanction the order of the clerk to call a special meeting. The notice for a special meeting should specify the object,

as well as the time and place of the meeting. If the clerk cannot give notice for annual or special meetings, either of the trustees may do the clerk's duty in this particular. Sec. 85, sub. 2.

Form of Notice for a Special District Meeting.

To the clerk of district number

The trustees of district number at a meeting held for the purpose, have resolved that a special meeting be called at the school-house, on the day of 18 at o'clock in the noon of that day, for the purpose of [*choosing a collector in place of A. B. removed, or whatever the object of the meeting may be,*] and for the transaction of such other business as the meeting may deem necessary.

You will therefore notify each taxable inhabitant of the district, by reading this notice in his hearing, or if he is absent from home, by leaving a copy of it, or so much as relates to the time and place of meeting, at the place of his abode, at least five days before such meeting.

Dated at this day of 18

A. B. }
C. D. } *Trustees.*
&c. }

Form of Notice for an adjourned District Meeting, to be posted up in the District.

SCHOOL DISTRICT NOTICE.

Notice is hereby given, that a meeting of the freeholders and inhabitants of this school district, authorized by law to vote therein, will be held at on the day of next, (or instant, as the case may be,) at o'clock in the noon, pursuant to adjournment. Dated at school district number in the town of this day of A. D. 18

A. B. *District Clerk.*

N. B. If it be the annual meeting, it should be so termed in the notice.

☞ These notices are to be posted up in four of the most public places in the district, at least five days before the annual, or any other meeting which has been adjourned for more than one month. Sec. 84, sub. 3.

Form of Minutes to be kept by the District Clerk, of Proceedings of District Meetings.

At a meeting of the freeholders and inhabitants of school district number _____ in the town of _____ held pursuant to adjournment, at _____ on the _____ day of _____ 18 ____ [or if it be the annual meeting, say, "at an annual meeting of, &c., held pursuant to appointment and public notice, at," &c. Or if it be a special meeting, say, "at a special meeting of, &c., called by the trustees of said district, and held pursuant to special notice, at, &c., on the _____ day of," &c.] A. B. was chosen moderator, and C. D. was present as district clerk, (or if the clerk be not present, say E. F. was appointed clerk pro tem.)

Resolved unanimously, (or by a majority of votes present, as the case may be,) here enter the proceedings of the district in the form of resolutions, and with as much precision and certainty as possible.

Let the minutes of the proceedings always be signed by the moderator and clerk, in the district book.

ALTERING SITE OF SCHOOL-HOUSE.

In order to change the site of a school-house, where the district has not been altered, as provided by section 70, &c., it is necessary,

1. To obtain the written consent of a major part of the commissioners of the town, or of each town to which the district belongs.
2. To call a *special* meeting, in the notification of which the purpose of the meeting shall be stated.
3. To obtain the concurrence of two-thirds of the qualified voters of the district, when thus specially called together.
4. To have the vote taken by ayes and noes, and the name of each person, and the vote he gave, taken and recorded.

In taking the vote by ayes and noes, it will be necessary for the clerk to make a list of the names of the voters present, with two columns at the end of the names, one headed "aye" and the other "no."

To ascertain the ayes and noes, the names are called over, and if the voter is in favor of the motion, a mark is made opposite his name, under *aye*—if against it, a like mark is made under *no*. Thus:

	<i>Aye.</i>	<i>No.</i>
Mr. Morehouse,	—	—
Mr. Curtis,	—	—
Mr. Budd,	—	—
Mr. Carroll,	—	—
Mr. Bettis,	—	—
Mr. Hough,	—	—
	4	2

The clerk will record these proceedings in the district book, in the following form:

At a meeting of the freeholders and inhabitants of district number in the town of held at the school-house in pursuance of notice to all the taxable inhabitants of said district, on the day of A. B. was chosen moderator, and C. D. was present as district clerk, (or E. F. was appointed clerk pro tem.) The written consent of the commissioners of common schools having been read, stating that in their opinion the removal of the site of the school-house in said district is necessary: And the subject having been submitted to the meeting, and the question taken by ayes and noes, it was carried, (or lost) two-thirds of all those present at such special meeting having [or *not*, as the case may be,] voted for such removal, and in favor of such new site: Those who voted in the affirmative, were Mr. Morehouse, Mr. Budd, Mr. Carroll and Mr. Hough; those who voted in the negative, were Mr. Curtis and Mr. Bettis.

Ayes 4. *Noes* 2.

[In stating the ayes and noes, the christian names of the voters should be given.]

After changing the site of the school-house, in the manner before prescribed, the voters of the district, at the same or any subsequent meeting, may pass a resolution, by a majority of those present, in the ordinary mode, directing the trustees to sell the house, according to sec. 73.

COMMISSIONERS AND INSPECTORS.

The following provisions, which relate to the commissioners and inspectors of common schools, are extracted from chapter XI. "Of the powers, duties and privileges of towns."

Commissioners of common schools must be electors of the town for which they are chosen. Sec. 1, Title III. chap. XI. p. 345, 1 R. S.

"Every person chosen commissioner or inspector of common schools, before he enters on the duties of his office, and within ten days after he shall be notified of his election, shall cause to be filed in the office of the town clerk, a notice in writing, signifying his acceptance of such office." Sec. 17, ib.

"If any person chosen or appointed to either of the offices named in the last section, shall not cause such notice to be filed, such neglect shall be deemed a refusal to serve." Sec. 18, ib.

"If any person chosen commissioner or inspector of common schools, shall refuse to serve therein, he shall forfeit for the use of the town, the sum of ten dollars." Sec. 26, ib.

"In each town, the supervisor and town clerk, together with the justices of the town, or any two of such justices, shall constitute a board of auditors to examine the accounts of the overseers of the poor, the commissioners of common schools, and the commissioners of highways of such town, for moneys received and disbursed by them." Sec. 46, Title 4, ib. p. 355.

"The board of auditors of town accounts shall meet for the purpose of examining the same annually in each town in this state, on the Tuesday preceding the annual town meeting to be held in such town." Sec. 47, ib.

"The electors of each town shall have power, at their annual town meeting, to establish the compensation of the fence viewers, inspectors of common schools, and collector of such town." [Sub. 9, of sec. 5, chap. 11, p. 340, 1 R. S. and sub. 2 of same chap. p. 356; amended by chap. 320, Session Laws of 1830, p. 384.]

Commissioners of common schools are allowed one dollar per day. See page 418, § 5.

School Money to be raised by Town.

The electors of each town, at their annual town meeting, have power,

"To direct such sum to be raised in such town, for the support of common schools for the then ensuing year, as they may deem necessary: but not exceeding a sum equal to the amount required by law, to be raised therein for that purpose." P. 340, 1 R. S. A special meeting may be called for this purpose, when twelve persons eligible as supervisors, make application in writing to the town clerk. 1 R. S. p. 341, sec. 7.

Recoveries against Commissioners and Trustees.

"§ 108. In suits by and against loan-officers, commissioners of loans, commissioners of common schools and commissioners of highways, trustees of school districts and trustees of gospel and school lots, the debt, damages or costs recovered against them shall be collected in the same manner as against individuals; and the amount so collected shall be allowed to them in their official accounts." 2 R. S. p. 476, sec. 108.

[Trustees of districts will bear in mind that this section does not apply to the school money received from the commissioners, as that must be paid for tuition according to the 24th section, to entitle the district to its apportionment for the next year. And all officers through whose hands the common school moneys may pass, will see that it is the intention of the statute relating to common schools, that the sum apportioned from the state treasury, together with the corresponding sum raised by tax upon the towns, shall be paid to the trustees of districts, and by those officers to approved teachers, without any diminution or diversion, under any pretence whatever. The school money cannot be applied for repairing school-houses, paying the fees of officers, or indemnifying them for costs incurred in the discharge of their official duties. All questions in regard to the public money may be submitted to the superintendent, and decided without cost to either party.]

The foregoing section of the Revised Statutes, so far as commissioners and trustees of common schools are concerned, must have reference to recoveries connected with the local securities in the hands of commissioners, and those growing out of the contracts made by trustees of districts; in all such cases the 108th section is to be regarded as directory to the town auditors in settling the accounts of commissioners, and to the district meetings in settling the accounts of trustees. But in no case can such audit justify an application of the school moneys to any other purpose than the payment of the wages of certified teachers.]

COMMISSIONERS OF SCHOOLS.

Form of Proceedings of Commissioners in Relation to Forming and Altering School Districts.

[In altering districts, the commissioners must be notified, and hold a meeting, and all proceedings in relation to a joint district, must have the approbation of at least two of the commissioners from each town, out of which the district is formed.]

"The commissioners of common schools of the town of _____ having met at the house of _____ in said town, in pursuance of

previous notice to each of said commissioners, do hereby adopt the following resolution in relation to the division of said town into school districts, viz:

"Resolved unanimously, [*or by a major part of the commissioners, as the case may be*] that district No. 1 shall consist of lots No. 1, 2, 3, and 4; district No. 2, of lots No. 5, 6, &c. [*here the boundaries of the district should be fully set forth; and where the district is described by giving the names of inhabitants, the addition should be made of the land occupied by the several persons named. This will prevent cavil in case the occupancy is changed. Where an individual is transferred from one district to another, the resolution ought to express whether it was done with or without his consent; as this fact is material in case he claims an exemption from tax under § 81. In altering a district, the consent of the trustees should be annexed to the resolution of the commissioners, as follows:*]

"We consent to the above alteration of district No.
Dated

A. B. }
C. D. } Trustees."
E. F. }

[If the trustees, or a major part of them, will not consent, then the commissioners should give notice, in writing, to one or more of them, setting forth the alteration made, viz:]

"To the trustees of school district No.

"Please to take notice, that we have this day altered your school district in the following manner, [*here give a particular description of the alteration*] and that said alteration will take effect after three months from the service of this notice.

"Dated at this day of 18

A. B. } Commissioners of
C. D. } Common Schools."

[This notice, or the consent of the trustees, should form a part of the description which is given to the town clerk for recording: and if it is the notice, a commissioner should annex his certificate, that a copy of the notice was duly served on one of the trustees, giving the date of such service.]

[Whenever a new district shall be formed, one or more of the commissioners must prepare a notice in the following form, directed to one of the taxable inhabitants of the district, viz:]

"To a taxable inhabitant of district No.
Sir—

By virtue of the 56th and 57th sections of the statute relating

to common schools, you are hereby required to notify (by reading this notice in his hearing, or in case of his absence from home, by leaving a copy thereof, or so much as relates to the time and place of meeting, at the place of his abode,); each of the taxable inhabitants residing in district No. and described as follows, viz: [*here give the bounds and description of the district*] to meet at in the town of on the day of at o'clock in the neon, to elect district officers, and to transact such other business as may be necessary in the organization of said district.

Dated at this day of 18

A. B. Commissioner."

[In forming a district from two or more towns, the above notice should be signed by one commissioner from each town.];

When the commissioners form a new district, and appraise the school-house, according to sections 77 and 78 they are to distribute the appraised value of the school-house in the same manner as the trustees of the district would apportion the like sum if it was a tax upon the several inhabitants of the district.

Having in this way ascertained the amount due to those set off as their portion of the school-house, and other property, the commissioners should make out an order to the trustees of the district retaining the school-house, as follows:

To the trustees of district No. in the town of

We, the commissioners of common schools of said town, having formed a new district, to which certain persons belonging to your district have been attached, and having valued the school-house and other property belonging to said district No. at 150 dollars, do determine that the amount justly due to such new district is fifty dollars, apportioned to the several persons set off, as follows: To A. B. 20 dollars, C. D. 15 dollars, E. F. 10 dollars, G. H. 5 dollars.

You are therefore, according to the statute relating to common schools, to levy and collect the said sum of fifty dollars, from the taxable inhabitants remaining in district No. after the alteration alluded to, and pay the same to the trustees of said new district No.

Given under our hands at

this day of 18

A. B. }
C. D. } Commissioners.

Form of the Annual Report of the Commissioners of Common Schools.

To the Superintendent of Common Schools of the State of New-York.

We, the commissioners of common schools of the town of _____ in the county of _____ in conformity to the statute in relation to common schools, do report: That the number of entire school districts in our town, organized according to law, is [eight] and that the number of parts of school districts in said town, is [five] that the number of entire districts from which the necessary reports have been made for the present year, within the time limited by law, is [eight] and that the number of parts of districts from which such reports have been made, is [five.] That from the said reports, the following is a just and true abstract, viz:

No.	DISTRICTS.	Parts of DISTRICTS.	Whole length of time any school has been kept therein.		Length of time each school has been kept by approved teachers.		Amount of money received		No. of children taught.	No. of children over 5 & under 16.	Amount paid for teachers' wages, besides public moneys.	No. of times each school has been inspected.
			Mons.	Days.	Mons.	Days.	Dols.	Cts.				
	1		6		3		10	30	48	34	\$20 60	2
	2		4		4		17	88	46	59	25 50	3
	3		8	12	8	12	15	76	77	52	23 30	4
	4		8		4		21	51	85	71	30 15	1
			6		6		21	21	73	70	30 20	0
	6		4		4		16	06	50	53	20 10	3
	7		4		4		11	51	50	38	16 00	4
	8		9	12	4		14	54	52	48	19 17	2
		9	10	6	10	6	9	70	33	32	12 40	1
		10	6		3		4	55	12	15	10 25	3
		11	6		6		8	48	28	30	13 00	4
		12	3	5	3	5	8	18	26	2	14 00	1
		13	8		8		8	79	34	2	10 70	2
Total.	17		83	5	65	23	168	47	614	557	245 37	30

And we, the said commissioners, do further certify and report that the whole amount of money received by us, or our predecessors in office, for the use of common schools, during the year ending on the date of this report, and since the date of the last report, for our town, is \$ _____ of which sum the part received from the county treasurer is \$ _____ the part from the town collector is \$ _____ [and if there be any other source from

which any part has been received, here state it particularly.]
 That the said sum of money has been apportioned and paid to the several districts from which the necessary reports were received by the commissioners. That the school books most in use in the common schools in our town, are the following, viz: *[here specify the principal books used.]*

Dated at the first day of July, in the year of our Lord one thousand eight hundred and

A. B. }
 C. D. } *Commissioners.*
 E. F. }

☞ The commissioners, in making their annual report should be careful when they make the abstract of districts formed from two or more towns, to include in the report of their town, only such of the children between five and sixteen and those taught, as reside in that part of the district belonging to the same town, for which the commissioners are making their report. And in putting down in the commissioners' report, the amount paid for teachers' wages, over and above public money, the same rules should be observed.

[The above report must be made and transmitted to the county clerk, between the first day of July and the first day of August in each year. The columns of figures should be added up by the commissioners. The county clerk, between the first of August and the first of October, should transmit to the Superintendent of Common Schools, a report containing a list of the towns in his county, distinguishing the towns from which the necessary reports have been made to him, together with a certified copy of all such reports.]

INSPECTORS OF COMMON SCHOOLS.

1. Three inspectors are required to sign the certificate for a teacher: And three should hold a meeting for the examination of a teacher.

2. The commissioners are, by virtue of their offices, authorized to act as inspectors.

3. Teachers are required to be inspected and to obtain certificates every year.

4. It is the duty of inspectors to visit each school at least once in each year.

5. The inspectors are allowed such compensation as may be decided upon by a vote of the town meeting. [See page 437.]

Form of a Certificate to be given to a Teacher.

We, the subscribers, inspectors of common schools for the town of _____ in the county of _____ Do CERTIFY, that at a meeting of the inspectors, called for that purpose, we have examined (*here insert the name of the teacher*) and do believe that he (*or she, as the case may be*) is well qualified in respect to moral character, learning and ability, to instruct a common school, in this town for one year from the date hereof.

Given under our hands, at _____ this _____ day of _____ 18

A. B. }
C. D. } *Inspectors of Com-*
E. F. } *mon Schools.*

APPEALS.

The Superintendent of Common Schools has prescribed the following Regulations, to be observed in cases of appeal to him.

1. All appeals must be presented within 30 days after the making of the decision complained of; unless sufficient excuse, on oath, be shown for not making the appeal within the time prescribed.

2. It is recommended to the parties in all cases of appeal, to agree upon a statement of facts to be signed by the parties interested, and presented to the superintendent for his decision thereon.

3. If the parties cannot agree upon a state of facts, the party appealing must present his case upon affidavits, a copy of which affidavits, with notice of the time when the appeal will be presented, must be served on the commissioners or trustees, whose decision is appealed from; or if the appeal is from the decision of a district meeting, then on the trustees or clerk of the district, at least ten days before the time of presenting the appeal: and proof of such service must be made by affidavit or otherwise, at the time of presenting the appeal. And all facts in opposition to the appeal, must be presented by the party opposing, by affidavit or on oath, and copies of such affidavits must be served on the appellant.

4. It shall not be necessary for either party to appear personally before the Superintendent on the appeal: but such appeal may be by letter, enclosing the state of facts, agreed upon by the parties; or the notice and affidavits on which the appeal is found-

ed, with the evidence of the regular service thereof; and either party may suggest in writing, any reasons for or against such appeal, arising out of the facts agreed upon, or appearing from the affidavits.

5. Where the appeal has relation to the formation or alteration of a school district, it must be accompanied by a map, exhibiting the site of the school-house, the roads, the old and new lines of districts, the different lots, the particular location and distance from the school, of the persons aggrieved, and their relative distance, if there are two or more school-houses in question. Also, a list of all the taxable inhabitants in the district or territory to be affected by the question; the valuations of their property, taken from the last assessment roll, and the number of children between five and sixteen belonging to each person; distinguishing the districts to which they respectively belong.

6. After copies of the appeal in any case have been served, all proceedings, from the operation of which relief is sought by the appeal, will be suspended until the case is decided.

7. Where the commissioners discover errors in the reports of trustees, which are obviously defects in form merely, they should afford the trustees an opportunity of amending their report, and then pay the district its distributive share of the school money, if the facts as set forth in the amended report warrant it.

8. Where the decision of commissioners is appealed from in relation to the distribution of the public money to the several districts, they ought to retain the money which is in dispute, until the appeal is decided.

JOHN A. DIX,
Superintendent of Common Schools.

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